

IB5JKET1

Charge Conference

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

17 Cr. 00243 SHS

5 ANDREW OWIMRIN, a/k/a "Andrew Owens,"  
6 a/k/a "Jonathan Stewart," and  
7 SHAHRAM KETABCHI, a/k/a "Steve Ketabchi,"

8 Defendants.

-----x

9 November 5, 2018  
9:20 a.m.

10 Before:

11 HON. SIDNEY H. STEIN,

12 District Judge  
13 and a jury

14 APPEARANCES

15 GEOFFREY S. BERMAN,  
16 United States Attorney for the  
17 Southern District of New York  
18 KIERSTEN ANN FLETCHER,  
19 ROBERT BENJAMIN SOBELMAN,  
20 BENET JEANNE KEARNEY,  
21 Assistant United States Attorneys

22 SAM A. SCHMIDT,  
23 ABRAHAM JABIR ABEGAZ-HASSEN,  
24 Attorneys for defendant Owimrin

25 KENNETH A. PAUL,  
JACOB MITCHELL,  
Attorneys for defendant Ketabchi

Also Present:

CHRISTOPHER BASTOS, Detective NYPD and HSI  
CHRISTINE LEE, Paralegal USAO  
SAMUEL TUREFF, Paralegal

IB5JKET1

Charge Conference

1 (Trial resumes)

2 (In open court; jury not present)

3 THE COURT: All right. Good morning. Everyone is  
4 here including the clients. Your clients do not have to be  
5 here, but welcome to everybody. All the lawyers are here.  
6 Please be seated. We're on the record for the charging  
7 conference.

8 The parties received on Friday afternoon the hard copy  
9 of the court's proposed charge. Since then, the only change  
10 I've made relates to the fact that both defendants have decided  
11 to testify, so that we took out the option charge if a  
12 defendant does not testify, then pluralized the charge that  
13 said the defendants have testified. Everything else is the  
14 same.

15 Let's be very efficient in this. I am going to take  
16 the hard copy that was given to the parties and we'll just see  
17 if there are any objections whatsoever.

18 So first let's take if there are any objections in  
19 Roman Numeral I; that is, Pages 1 through and including 34.

20 Anyone have any objections?

21 MS. KEARNEY: Not an objection, but a proposed  
22 addition, your Honor.

23 THE COURT: All right.

24 MS. KEARNEY: Charge 12, charts and summaries admitted  
25 in evidence.

IB5JKET1

Charge Conference

1 THE COURT: Just a moment. (Pause)

2 Anyone have anything before Charge 12? Let's go to  
3 Charge 12. Yes, ma'am.

4 MS. KEARNEY: That charge, the government is fine with  
5 it as-is. In our proposed request to charge, we also included  
6 charts and summaries not admitted in evidence.

7 THE COURT: As far as my recollection and notes went,  
8 every chart and summary was admitted.

9 MS. KEARNEY: I think 711, which is the flow chart of  
10 the processing, was not admitted as an exhibit, just as an aid  
11 to the jury in understanding the testimony.

12 MR. PAUL: I think that is true.

13 THE COURT: Let me look at the government's charge.

14 MS. KEARNEY: It is on Page 50 of the government's  
15 request to charge.

16 (Pause)

17 THE COURT: I have no objection to adding right behind  
18 my Charge 12, which is entitled, "Charts and summaries admitted  
19 in evidence," the government's proposed charge which is its  
20 Request No. 36, "charts and summaries not admitted as  
21 evidence." Any objection to that?

22 MR. PAUL: No.

23 THE COURT: I will make one change, though, there for  
24 correct parallelism. The penultimate sentence in Government  
25 Request No. 36 says: "To the extent the charge conforms to

IB5JKET1

Charge Conference

1 what you determine the underlying facts to be, you should  
2 accept them, and then to the extent that the charge differs,  
3 you may reject them. So I am just going to make both of those,  
4 "may." Any objection?

5 MR. SCHMIDT: No objection.

6 MR. PAUL: No.

7 THE COURT: So we now have a new Charge 13. All  
8 right. Thank you for that, Government.

9 Anything else?

10 MR. SCHMIDT: Yes, I have objections to No. 23,  
11 conscious avoidance.

12 THE COURT: Yes, I understand that.

13 MS. KEARNEY: I have 17 first if we want to go in  
14 order?

15 THE COURT: I do want to go in order.

16 MR. SCHMIDT: 17 goes first.

17 THE COURT: Are we going Page 17 or Charge 17?

18 MS. KEARNEY: Charge 17, Page 26.

19 THE COURT: All right. Yes, ma'am.

20 MS. KEARNEY: The objection is to the first sentence  
21 of the third paragraph, "Where a cooperating witness testifies,  
22 that testimony must be examined with greater scrutiny than the  
23 testimony an ordinary witness."

24 MR. SCHMIDT: Sorry? You say the first sentence?

25 MS. KEARNEY: The first sentence of the third

IB5JKET1

Charge Conference

1 paragraph.

2 THE COURT: Yes, go ahead.

3 MS. KEARNEY: I think the "must" there is not  
4 appropriate. I think the government's proposed charge on this  
5 issue would be more appropriate, and the issue is this: The  
6 jury may --

7 THE COURT: What is the government's proposed charge?

8 MS. KEARNEY: It is on Page 37, Request No. 26, and  
9 the specific language is the --

10 THE COURT: Just a moment. (Pause)

11 MS. KEARNEY: The first sentence of the 5th paragraph,  
12 which is because of the possible interest the cooperating  
13 witness may have in testifying, the cooperating witness  
14 testimony should be scrutinized with care and caution.

15 The issue here is there are many witnesses who have  
16 potential biases and motives for testifying, and cooperating  
17 witnesses certainly do, but that doesn't mean this particular  
18 motive must be scrutinized more carefully than any other  
19 particular motive a witness may have.

20 THE COURT: Any objection to that change?

21 MR. SCHMIDT: Yes.

22 MR. PAUL: Yes.

23 THE COURT: I think I get it from Sand. Let me take a  
24 look.

25 MR. PAUL: That is how I always recall hearing it.

IB5JKET1

Charge Conference

1 MR. SCHMIDT: Simply the reason is that cooperating  
2 witnesses have, by definition, need to be scrutinized more.  
3 Similarly, a defendant, you know, has an interest, and there it  
4 is more scrutinized. I think it works in everybody's interests  
5 to be much more subtle and different.

6 MS. KEARNEY: To take that to its logical  
7 conclusion -- and I am not requesting this -- you should say  
8 like the defendants have an interesting in testifying.

9 THE COURT: No, that is not what the Second Circuit  
10 says.

11 MS. KEARNEY: I am not requesting that. That is why I  
12 think the "must" is the issue here.

13 THE COURT: I am just going to take a look at Sand. I  
14 think this is from Sand. (Pause) I want to take a look at  
15 Sand. I am pretty sure "must" is the traditional method. It  
16 certainly is with me.

17 Let's go on. What is the next one?

18 MR. SCHMIDT: 23.

19 MS. KEARNEY: 19.

20 THE COURT: Yes, ma'am.

21 MS. KEARNEY: Just to propose instead of "the  
22 defendant," it say "Shahram Ketabchi," since there are two  
23 defendants.

24 THE COURT: I think that's fine.

25 MR. SCHMIDT: I am sorry. Where are you reading?

IB5JKET1

Charge Conference

1 THE COURT: 19, it says the defendant has called a  
2 witness, and the government is requesting instead it read,  
3 "Shahram Ketabchi has called a witness."

4 MR. PAUL: That is fine.

5 THE COURT: Yes, it is. The next one.

6 MR. SCHMIDT: 23, your Honor, as conscious avoidance,  
7 first note my general objection to conscious avoidance.

8 THE COURT: In 22?

9 MR. SCHMIDT: 23, Page 33.

10 THE COURT: That is the change? We took one out  
11 because both defendants have now testified.

12 Conscious avoidance. Go ahead.

13 MR. SCHMIDT: Note my general objection.

14 I think conscious avoidance generally changes the  
15 burden from the government to the defense and lessens the  
16 burden on the government. So that is my general objection to  
17 conscious avoidance. If your Honor disagrees and is going to  
18 have this charge, on the last paragraph, the second to the last  
19 sentence that starts, "However," the problem --

20 THE COURT: Just let me find it. Yes, "However, if  
21 you find that the defendant actually believed"?

22 MR. SCHMIDT: Yes.

23 THE COURT: Yes.

24 MR. SCHMIDT: Yes. The problem that I have there is  
25 that without some other language, it, indeed, shifts the

IB5JKET1

Charge Conference

1     burden. I suggest that it read:

2             "The government must also prove beyond a reasonable  
3     doubt that the defendant did not actually believe the fact was  
4     not so. If the government did not find that he acted knowingly  
5     with respect to the fact, you must find the defendant not  
6     guilty." That simply means --

7             THE COURT: Let me read it on the screen. (Pause)

8             If the government did not prove that he acted  
9     knowingly? Go ahead, sir.

10            MR. SCHMIDT: It is basically because being phrased  
11     the way it is there, it seems like it is almost an affirmative  
12     defense that the defendant, you know, needs to prove that he  
13     did not actually believe the fact is not so, as opposed to the  
14     burden is on the government to prove that the defendant did not  
15     actually believe the fact was so.

16            THE COURT: The government.

17            MS. KEARNEY: First, I believe this is straight Sand.

18            Second, the way it works is it is the government's  
19     burden to show the high probability, in which case if the  
20     defendant demonstrates the actual belief, then the high  
21     probability is not sufficient.

22            THE COURT: I actually think this states the law just  
23     as it is. All right. I am going to keep it the way it is  
24     except it says "she acted," that is because this is from my  
25     charge -- is really from Sand. I am going to make that "he."



IB5JKET1

Charge Conference

1 MR. PAUL: Your Honor, I join in the objections.

2 THE COURT: Both of your objections are noted and you  
3 have them for the record.

4 MR. SCHMIDT: The next one I have is 31, Page 46.

5 MS. KEARNEY: I have a proposed revision for No. 27,  
6 Page 40, just to make the wording clearer.

7 THE COURT: Give me the title as well, "Existence of  
8 the conspiracy"?

9 MS. KEARNEY: Existence of the conspiracy, the third  
10 to last paragraph, the last sentence, I just propose it say:

11 "To violate the law in the manner charged in Counts 1  
12 and/or 2." Otherwise it implies they have to find both.

13 MR. PAUL: Where are you?

14 MS. KEARNEY: Page 40.

15 THE COURT: The government is proposing the third from  
16 the last paragraph, "In short, as far as the first element of  
17 the conspiracy is concerned, the government must prove beyond a  
18 reasonable doubt that at least two alleged conspirators came to  
19 a mutual understanding, either spoken or unspoken, to violate  
20 the law in the manner charged in Counts 1 and/or 2."

21 MR. SCHMIDT: I have no objection, your Honor.

22 THE COURT: Mr. Paul?

23 MR. PAUL: I have no objection.

24 THE COURT: We'll make that change and/or. A  
25 formulation I hate, but I will put it in.

IB5JKET1

Charge Conference

1 MS. KEARNEY: I apologize.

2 THE COURT: I understand the concern. The next one.

3 MR. SCHMIDT: Your Honor, No. 31 on Page 46.

4 THE COURT: Just a moment. Yes, sir, Count 1,  
5 conspiracy to commit wire fraud?

6 MR. SCHMIDT: That's correct, object of the  
7 conspiracy.

8 THE COURT: Yes.

9 MR. SCHMIDT: The last sentence reads:

10 "You may also find the existence of such a scheme if  
11 could find the defendant conducted himself in a manner that  
12 departed from the" --

13 THE COURT: Speak into the microphone.

14 MR. SCHMIDT: "You may also find the existence of such  
15 a scheme if you find that the defendant conducted himself in a  
16 manner that departed from traditional notions of fundamental  
17 honesty and fair play in the general business life of society."

18 I would ask your Honor that it read:

19 "You may also find the existence of such a scheme if  
20 you find that the defendant knowingly and intentionally  
21 conducted himself in a manner," et cetera.

22 THE COURT: The government? I think that's what the  
23 law is. They have to have a knowing element.

24 MS. KEARNEY: Yes, I think that is covered in 32, the  
25 first paragraph.

IB5JKET1

Charge Conference

1 THE COURT: It is, but there is no harm in putting it  
2 in again.

3 MS. KEARNEY: No.

4 THE COURT: I will make that change.

5 "You may also find the existence of such a scheme if  
6 you find that the defendant knowingly and intentionally  
7 conducted himself in a manner that departed from traditional  
8 notions of fundamental honesty and fair play in the general  
9 business life of society."

10 Let me go back to Sand here. (Pause).

11 (Off-the-record discussion)

12 Does anyone have the Sand reference charge on  
13 cooperating witness testimony that we were talking about  
14 earlier because I can't seem to find it and I was pretty sure  
15 this is from Sand.

16 MS. KEARNEY: I don't have it handy, your Honor. I am  
17 sorry.

18 MR. SCHMIDT: Your Honor, it is not going to impact on  
19 my summation.

20 THE COURT: You have to speak into the microphone,  
21 sir.

22 MR. SCHMIDT: If your Honor can't make a decision now  
23 on that issue, it is not going to impact on my summation.

24 THE COURT: I know. You're entitled to a charge,  
25 knowing what the charge is. That is all right. I want to keep

IB5JKET1

Charge Conference

1 it clean. (Pause) What I am going to do, I am going to make,  
2 "must" "should," and I think that handles the more troubling  
3 language.

4 MR. PAUL: May I ask how Sand --

5 THE COURT: I don't see Sand in front of me, but I  
6 will grant the request. Hold on. (Pause)

7 I am going to make it "should," softening it a little  
8 bit. So on Charge 17, cooperating witness testimony, Page 26,  
9 the paragraph that begins, "where a cooperating witness  
10 testifies," will read, "that testimony should be examined with  
11 greater scrutiny than the testimony of an ordinary witness.  
12 You should consider," and so on and so forth.

13 I think the key part really is in Sand. You should  
14 look at all the evidence and decide what credence and what  
15 weight, if any, you will want to give to the cooperating  
16 witness. That takes care of Mr. Schmidt's concern. Let's go  
17 back now to where we were.

18 I just handled the request on Count 1, conspiracy to  
19 commit wire fraud, and granted the request to add, "knowingly  
20 and intentionally."

21 What is the next number anyone has?

22 MS. KEARNEY: 36, Page 55, it is just for clarity.

23 THE COURT: Count 2, conspiracy to commit money  
24 laundering, object of the conspiracy?

25 MS. KEARNEY: Correct.

IB5JKET1

Charge Conference

1 THE COURT: Yes, ma'am.

2 MS. KEARNEY: I propose the third sentence of the  
3 third paragraph start with but --

4 THE COURT: Instead of?

5 MS. KEARNEY: Instead of, "just for example."

6 THE COURT: All right. Let me read it. (Pause)

7 MR. SCHMIDT: I think "for example" is better because  
8 that's just an example of a problem as opposed to the only  
9 problem.

10 THE COURT: Let me read it.

11 MS. KEARNEY: My proposal is it start "but, for  
12 example."

13 THE COURT: Ah, Mr. Schmidt?

14 MR. SCHMIDT: Then I have no objections.

15 MR. PAUL: No objections.

16 THE COURT: Without reading it then, I am going to  
17 add, "but, for example." Now I'll read it.

18 That's fine. I think that is a minor improvement.

19 All right. Next one.

20 MS. KEARNEY: Charge 38, Count 2, conspiracy to commit  
21 money laundering, Object 1, the first element.

22 THE COURT: Yes, ma'am. 1956 money laundering?

23 MS. KEARNEY: Correct. The last paragraph, Page 59.

24 THE COURT: Yes, ma'am.

25 MS. KEARNEY: We haven't had any testimony to date,

IB5JKET1

Charge Conference

1 and I don't expect there will be, regarding the FDIC, so I  
2 think including the second sentence may be confusing to the  
3 jury.

4 THE COURT: That's from my --

5 MS. KEARNEY: Right. I propose we take out that  
6 sentence and renumber the other two ways so it is between the  
7 United States and a foreign country.

8 If you find the source of funds used in the  
9 transaction affected interstate commerce, that is sufficient,  
10 or if you find the transaction itself involved interstate  
11 transfer of funds, that would also be sufficient.

12 THE COURT: Any objection?

13 MR. SCHMIDT: Your Honor, I have no objection.

14 However, there was some mention of international  
15 merchant processing.

16 THE COURT: That is in there by saying the first one,  
17 between the United States and a foreign country.

18 MR. SCHMIDT: Then I have no objection.

19 THE COURT: Let me just get that. (Pause) Mr. Paul,  
20 any problems?

21 MR. PAUL: No, no objection.

22 THE COURT: All right. This is how I am going to have  
23 that paragraph read:

24 "The term interstate or foreign commerce means  
25 commerce between any combination of states, territories or

IB5JKET1

Charge Conference

1 possessions of the United States or between the United States  
2 and a foreign country. Thus, if you find that the source of  
3 the funds used in the transaction affected interstate commerce,  
4 that is sufficient as well. Or, if you find that the  
5 transaction itself involved an interstate transfer of funds,  
6 that would also be sufficient."

7 Any objection, government?

8 MS. KEARNEY: No.

9 THE COURT: Mr. Schmidt?

10 MR. SCHMIDT: No.

11 THE COURT: Mr. Paul?

12 MR. PAUL: No, your Honor.

13 THE COURT: Next.

14 MR. SCHMIDT: On No. 41, Page 62.

15 THE COURT: Yes, sir.

16 MR. SCHMIDT: You have the second sentence starting  
17 with, "whether." You have:

18 "Whether each defendant intended to promote the  
19 carrying on of the telemarketing fraud may be established by  
20 proof of the defendant's actual knowledge by circumstantial  
21 evidence or by the defendant's conscious avoidance."

22 Now, what is happening here is that conscious  
23 avoidance is used for knowledge and cannot be used in  
24 determining intent. I think that this would confuse the use of  
25 conscious avoidance, your Honor, having using the word,

IB5JKET1

Charge Conference

1 "intended" in the same sentence.

2 THE COURT: Just a moment. (Pause)

3 MS. KEARNEY: If I may, your Honor?

4 THE COURT: Hold on. (Pause)

5 MR. SCHMIDT: I note the last two words, the  
6 defendant's knowledge at the bottom of the paragraph, and as  
7 your Honor is aware --

8 THE COURT: Just a moment.

9 (Pause) Let me hear the argument, Mr. Schmidt.

10 MR. SCHMIDT: Your Honor --

11 THE COURT: I know you're concerned about conscious  
12 avoidance. What are you proposing?

13 MR. SCHMIDT: And that section does talk about the  
14 intent to promote. My suggestion is that this paragraph read:

15 "The fourth element that the government must prove  
16 beyond a reasonable doubt is that the conspirators agreed to  
17 engage in the financial transactions knowingly and  
18 intentionally, that the purpose of the transaction was to  
19 promote the carrying on of specified unlawful activity; namely,  
20 telemarketing fraud."

21 I suggest that your Honor eliminate the next sentence  
22 because it is --

23 THE COURT: And then?

24 MR. SCHMIDT: And substitute what I previously  
25 discussed with you, the terms "knowingly and intentionally,"



IB5JKET1

Charge Conference

1 all right?

2 And then go to leave out, "In other words, you are  
3 entitled to find from the circumstances surrounding the  
4 financial transactions or attempted financial transactions, the  
5 purpose of that activity and the defendant's knowledge and  
6 intent."

7 THE COURT: The government?

8 MS. KEARNEY: I didn't quite follow. I am sorry.

9 THE COURT: What he is doing, he hates conscious  
10 avoidance.

11 MS. KEARNEY: I understand that.

12 THE COURT: So what he's doing is taking out the  
13 middle sentence that has the words "conscious avoidance" in it,  
14 keeping the first sentence which talks about intent and the  
15 last sentence which allows an inferential conclusion of intent;  
16 that is, you are entitled to find from the circumstances  
17 surrounding the financial transactions that the defendant's  
18 knowledge. I think that gets you where you want to go without  
19 the hated phrase, "conscious avoidance."

20 MS. KEARNEY: If I understand it correctly, I think we  
21 are okay with it.

22 MR. SCHMIDT: Your Honor --

23 THE COURT: Don't mess it up, Mr. Schmidt.

24 MR. SCHMIDT: -- it is not just conscious avoidance in  
25 this.

IB5JKET1

Charge Conference

1 THE COURT: I am cutting out the second sentence.

2 MR. SCHMIDT: It is conflating knowledge. So I ask  
3 that after, on the first sentence afterward financial  
4 transactions, that knowingly and intentionally is put in, not  
5 just knowledge because it also requires intent, or knowledge  
6 and intent with the knowledge and with the knowledge of just  
7 adding and intent.

8 THE COURT: It says with the knowledge that the  
9 purpose of the transaction, and it is entitled, "intent." They  
10 understand intent. Just a moment. I am going to look at your  
11 words here. (Pause)

12 MR. SCHMIDT: I have a slight modification, your  
13 Honor.

14 THE COURT: Just a moment. (Pause)

15 MR. SCHMIDT: My suggestion will actually be keep  
16 everything there other than --

17 THE COURT: What is your current proposal?

18 MR. SCHMIDT: On the first sentence, before the word  
19 "agreed" would be "intentionally agreed," and at the end of the  
20 last sentence after the defendant's knowledge, adding the words  
21 "and intent," and, of course, taking out the "whether"  
22 sentence. This way only three words need to be added and that  
23 one sentence taken out.

24 MS. KEARNEY: Knowledge and intent the government is  
25 fine with. Intentionally --

IB5JKET1

Charge Conference

1 THE COURT: Wait, wait, wait. You mean at the end?

2 MS. KEARNEY: Correct, with the knowledge and intent  
3 of the purpose of the transaction, the conspirators  
4 intentionally agreed.

5 THE COURT: I am not putting that in. So let's see if  
6 we have it.

7 "The fourth element that the government must prove  
8 beyond a reasonable doubt is that the conspirators agreed to  
9 engage in these financial transactions with the knowledge that  
10 the purpose of the transaction was to promote the carrying on  
11 of specified unlawful activity; namely, the telemarketing  
12 fraud." Well, "In other words" doesn't work there.

13 MR. SCHMIDT: You start the sentence with "you."

14 THE COURT: Just a minute. (Pause) The government?

15 MS. KEARNEY: We are taking out the entire second  
16 sentence and just beginning the last sentence, "you are  
17 entitled" --

18 THE COURT: And ending the word, "You are entitled to  
19 find from the circumstances surrounding the financial  
20 transactions or attempted financial transactions the purpose of  
21 that activity and the defendant's knowledge and intent."

22 MS. KEARNEY: That is fine.

23 THE COURT: Fine. That is what we'll do. Just a  
24 moment.

25 MR. PAUL: Is your Honor putting in "and intent" in

IB5JKET1

Charge Conference

1 that first sentence after "knowledge"?

2 THE COURT: You mean intentionally agreed? The first  
3 sentence will read as it now is, as it is typed in front of  
4 you. I will read it again. I will read that charge again.

5 "The fourth element that the government must prove  
6 beyond a reasonable doubt is that the conspirators agreed to  
7 engage in these financial transactions with the knowledge that  
8 the purpose of the transaction was to promote the carrying on  
9 of specified unlawful activity; namely, the telemarketing  
10 fraud. You are entitled to find from the circumstances  
11 surrounding the financial transactions or attempted financial  
12 transactions the purpose of that activity and the defendant's  
13 knowledge and intent."

14 Mr. Paul?

15 MR. PAUL: That is fine.

16 THE COURT: Mr. Schmidt?

17 MR. SCHMIDT: That is fine.

18 THE COURT: The government?

19 MS. KEARNEY: That is fine.

20 THE COURT: Anything else?

21 MS. KEARNEY: My next one, your Honor, is No. 43,  
22 conspiracy to commit money laundering, the 1957 object, the  
23 first element.

24 THE COURT: Yes.

25 MS. KEARNEY: Just to conform it to match the FDIC

IB5JKET1

Charge Conference

1 provision.

2 THE COURT: Yes, all right. Where was that earlier  
3 change, what number?

4 MS. KEARNEY: 38, Page 59.

5 THE COURT: All right. Thank you. The last paragraph  
6 on Count 2, a conspiracy to commit money laundering, Object 2,  
7 the conspiracy to commit money laundering, the first element  
8 will read the same as when we deleted JP Morgan Chase Bank and  
9 the FDIC language. Next.

10 MS. KEARNEY: 48, venue.

11 THE COURT: Yes, ma'am.

12 MS. KEARNEY: I am requesting the court add a sentence  
13 specifying that the defendant need not be the person who  
14 performed or caused the action that occurred in the Southern  
15 District of New York.

16 THE COURT: Where?

17 MS. KEARNEY: Between the second paragraph and the  
18 third paragraph.

19 THE COURT: What is the language?

20 MS. KEARNEY: Whatever your Honor would like it to be,  
21 but I propose:

22 "I also note that the defendant need not be the  
23 individual who committed or caused the act in furtherance of  
24 the conspiracy and the act may have been committed by a  
25 co-conspirator even if that co-conspirator is not a defendant

IB5JKET1

Charge Conference

1 in this case." (Pause)

2 THE COURT: All right. Defendants, any objection?

3 MR. PAUL: No objection.

4 MR. SCHMIDT: No objection.

5 THE COURT: All right. "I also note that the  
6 defendant need not be the individual who committed or caused  
7 the act in furtherance of the conspiracy and the act may have  
8 been committed by a co-conspirator even if that co-conspirator  
9 is not a defendant in this trial." All right, all agreed upon  
10 by everyone.

11 Any other changes?

12 MS. KEARNEY: Yes, your Honor, there are two charges  
13 that were not in the proposed charge. The first is the  
14 question of punishment is not to be considered by the jury.

15 THE COURT: That should be in my closing --

16 MS. KEARNEY: Okay.

17 THE COURT: -- instructions. Let me look.

18 MR. PAUL: Yes, it is.

19 MS. KEARNEY: Never mind then.

20 THE COURT: All right. What else?

21 MS. KEARNEY: An uncalled witness charge.

22 THE COURT: Defense, do you have have objection to  
23 putting in an uncalled witness charge?

24 MR. PAUL: I have to see the charge before I comment  
25 on it. As I recall, I don't have objections.

IB5JKET1

Charge Conference

1 MR. SCHMIDT: Your Honor, I probably would, simply  
2 because notwithstanding the ability for us to subpoena  
3 witnesses, even cooperators like Mr. Paul is doing, it is clear  
4 that the government's ability to call witnesses is not the same  
5 as the defense. However, I will not be arguing anything  
6 relating to the fact that the government did not call any  
7 particular witness.

8 THE COURT: The government, if there is no argument in  
9 summation, I am not going to put it in.

10 MS. KEARNEY: All right.

11 THE COURT: I think that does it for you. Anything  
12 else? The charge then, except for the exceptions noted on the  
13 record this morning, is complete. This is the charge I will be  
14 giving. I don't know if the entire jury is here. I'll find  
15 out in a moment.

16 We are in the midst of the cross-examination of  
17 Mr. Shahram Ketabchi. What is your estimate, Ms. Fletcher?

18 MS. FLETCHER: About 30 to 40 minutes.

19 THE COURT: And then I believe Mr. Paul, you said that  
20 the final witness will be Mr. Finocchiaro?

21 MR. PAUL: That's correct.

22 THE COURT: Let's see if the jury is here. I will  
23 step off the Bench.

24 (Recess)

25 (Continued on next page)

IB58KET2

Ketabchi - Cross

1 (Jury not present)

2 THE COURT: Your client, Mr. Paul.

3 MR. PAUL: I think he went to the men's room.

4 THE COURT: Is your estimate on Mr. Finocchiaro still  
5 about an hour?

6 MR. PAUL: I think so.

7 THE COURT: That was an efficient charging conference.  
8 I appreciate it.

9 Mr. Ketabchi, if you would take the stand again, sir.

10 (Continued on next page)



IB58KET2

Ketabchi - Cross

1 (Jury present)

2 SHAHRAM KETABCHI, resumed.

3 THE COURT: Please be seated in the courtroom.

4 Good morning, ladies and gentlemen. Welcome. I hope  
5 you had a pleasant weekend. We handled legal matters that we  
6 had to take care of and there will now be the continuation of  
7 the cross-examination of Shahram Ketabchi by Ms. Fletcher.

8 Mr. Ketabchi, I remind you that you remain under oath.  
9 You understand that?

10 THE WITNESS: I understand.

11 THE COURT: Proceed.

12 CROSS-EXAMINATION (Cont'd)

13 BY MS. FLETCHER:

14 Q. Good morning, Mr. Ketabchi.

15 A. Good morning, ma'am.

16 MS. FLETCHER: Ms. Lee, can we start by pulling up  
17 Government Exhibit 431 for identification.

18 Q. Mr. Ketabchi, I am going to show you a couple more e-mails  
19 in addition to the ones we looked at on Friday.

20 MS. FLETCHER: Can we blow up the top portion of that,  
21 Ms. Lee, so Mr. Ketabchi can read it on his screen.

22 Q. Mr. Ketabchi, this is an e-mail chain, isn't it, e-mail  
23 from you to your brother Arash?

24 A. Yes.

25 Q. Dated November 11, 2015?

IB58KET2

Ketabchi - Cross

1 A. Yes.

2 Q. And it relates to a chargeback, doesn't it?

3 A. I am reading the document, if you just give me one moment  
4 to verify.

5 I think it's trying to determine if it's a chargeback  
6 from a certain customer that they are having.

7 MS. FLETCHER: The government offers Government  
8 Exhibit 431.

9 THE COURT: Hearing no objection, admitted.

10 (Government's Exhibit 431 received in evidence)

11 MS. FLETCHER: Please publish, Ms. Lee.

12 BY MS. FLETCHER:

13 Q. Mr. Ketabchi, do you see the bottom e-mail on the chain is  
14 an e-mail from Bill Sinclair?

15 A. Where it says, "OK, so apparently"?

16 Q. Yes. He mentioned that Arash sold Geraldine on August 12,  
17 and then Arash sold her again on August 20?

18 A. Yes, I see that.

19 Q. And Mr. Sinclair explains that Andrew came to the office  
20 one day a few weeks ago to follow up with her because they  
21 don't have her contract.

22 Do you see that?

23 A. Yes, I see that.

24 Q. Then you respond to Arash, "I don't even think that  
25 chargeback is from her anyway but just to cover all of your

IB58KET2

Ketabchi - Cross

1 bases."

2 What does that mean?

3 A. I actually didn't write that. That's from Olive Branch  
4 Marketing, if you look at on Wednesday, November 11, 2015.  
5 That's right above. That's in that chain.

6 Q. You don't think "just to cover all your bases" is from you?

7 A. No, it's not. It's from Olive Branch Marketing.

8 Q. Let's pull up what has been marked for identification as  
9 Government Exhibit 433.

10 THE COURT: Your e-mail is not Positive Faith?

11 THE WITNESS: It is, but in that chain that response  
12 was from Olive Branch, your Honor.

13 THE COURT: All right.

14 MS. FLETCHER: Can we blow up the top half of that  
15 page, Ms. Lee, including the heading.

16 Q. Mr. Ketabchi, this is another e-mail chain, isn't it, from  
17 you to your brother Arash on November 19, 2015?

18 A. Yes.

19 Q. And it relates to chargebacks for Jeanette Waldrup  
20 and -- just Jeanette Waldrup, doesn't it?

21 A. I'm just reviewing the document. One moment, please.

22 Yes, it's Jeanette.

23 MS. FLETCHER: The government offers Government  
24 Exhibit 433.

25 MR. SCHMIDT: Your Honor, may I have a moment because

IB58KET2

Ketabchi - Cross

1 these are new exhibits so I haven't gone through them yet.

2 THE COURT: Yes.

3 MR. SCHMIDT: Thank you.

4 Your Honor, I object.

5 THE COURT: Basis? It's from this witness to Arash  
6 Ketabchi.

7 MR. SCHMIDT: I think, though, within the e-mails  
8 there are hearsay that are not from them.

9 THE COURT: Scroll up, please.

10 MR. SCHMIDT: Your Honor, I withdraw the objection.

11 MR. PAUL: I have no objection.

12 THE COURT: Admitted.

13 (Government's Exhibit 433 received in evidence)

14 MS. FLETCHER: Please publish, Ms. Lee.

15 BY MS. FLETCHER:

16 Q. Mr. Ketabchi, do you recall on Friday we discussed the  
17 chargeback that you responded to related to Jeanette Waldrup?  
18 It was an Element chargeback and the initial draft of your  
19 response was on A1 letterhead.

20 Do you recall that?

21 A. I recall that, yes.

22 Q. Taking a look at this, you're explaining to your brother  
23 Arash that this is not the reason why the merchant is denying  
24 the chargeback. It's because proof of fulfillment is no good.  
25 Is that accurate?

IB58KET2

Ketabchi - Cross

1 A. I wrote that, yes.

2 Q. And you tell your brother after that that he told you that  
3 Fino was winning chargebacks?

4 A. I see that.

5 Q. You see that here?

6 A. Yes.

7 Q. So you tell him, "The reality is Bill and Fino are out of  
8 the business because of the things we talked about. We need to  
9 revise the model. Now let's get it fixed."

10 Do you see that?

11 A. I see that.

12 Q. You're telling your brother that the two of you need to fix  
13 the business model of A1.

14 A. What I am telling my brother is that what he needs to do is  
15 to make sure that the clients are 100 percent satisfied with  
16 the services they are getting and fulfillment has to be on the  
17 same page, the fulfillment company he is using, and they need  
18 to make sure whatever the salespeople are selling, the  
19 fulfillment company has to make sure that the customers are  
20 getting exactly that. Otherwise what is going to happen is  
21 what happened to Bill and Fino, they are going to go out of  
22 business because they are not taking care of the customers and  
23 delivering what they promised.

24 So it's a very critical business matter being in the  
25 telemarketing business that my brother was. So based on my

IB58KET2

Ketabchi - Cross

1 business experience, that's what I shared with him because I  
2 wanted him to have a successful business. That's what that  
3 e-mail implies.

4 Q. OK. Let's pull up what has been marked for identification  
5 as Government Exhibit 438.

6 MS. FLETCHER: If we can blow up just the top half of  
7 that.

8 Q. Mr. Ketabchi, this is an e-mail between Heidi Brownfield,  
9 you, and your brother related to Element and Al Business  
10 chargebacks, isn't it?

11 A. If you give me a moment, I am going to read the letter.

12 Yeah. I believe this e-mail is in regards to Element  
13 business merchant account.

14 MS. FLETCHER: The government offers Government  
15 Exhibit 438.

16 THE COURT: Hearing no objection, admitted.

17 (Government's Exhibit 438 received in evidence)

18 BY MS. FLETCHER:

19 Q. Mr. Ketabchi, let's pull up -- take a look at what has been  
20 marked for identification as Government Exhibit 454.

21 Do you see that on your screen, sir?

22 A. Yes, I see that.

23 Q. This is an e-mail from you to your brother Arash on April  
24 25, 2016, isn't it?

25 A. It is.

IB58KET2

Ketabchi - Cross

1 Q. The e-mail lays out a number of transactions that indicate  
2 that there is a strategic block claim.

3 Do you see that?

4 A. Yes.

5 MS. FLETCHER: The government offers Government  
6 Exhibit 454.

7 MR. SCHMIDT: May I have a moment, your Honor?

8 THE COURT: Yes.

9 THE WITNESS: Can I explain what that is?

10 THE COURT: Just wait for a question, sir.

11 MS. FLETCHER: I am informed that this is already in  
12 evidence.

13 THE COURT: All right. Proceed.

14 Q. Do you see these transactions on your screen, Mr. Ketabchi,  
15 the transactions that you are e-mailing to your brother?

16 A. Yes.

17 Q. A strategic block claim, those are transactions where the  
18 credit card processor has identified that a chargeback is  
19 likely to occur, isn't it?

20 A. From my recollection -- I would have to look into this  
21 further -- but I recall this being a line of credit that my  
22 brother had borrowed from one of the fintech companies and that  
23 there was a block on the payment. This has no link to merchant  
24 accounts. So that is inaccurate.

25 MS. FLETCHER: You can take that down.

IB58KET2

Ketabchi - Cross

1 Q. Mr. Ketabchi, do you remember last week we discussed the  
2 continuation of services agreement, abbreviated COS?

3 A. I recall.

4 Q. Sometimes you included in your responses to chargebacks the  
5 COS that was signed by the customer?

6 A. That I received from POF, that is correct.

7 Q. When we talked last week, you testified that you didn't  
8 have an understanding as to how or when that document was  
9 created, is that correct?

10 A. I believe that was my recollection, yes.

11 Q. Is that your recollection today, you don't know how or why  
12 the continuation of services agreement is created?

13 A. Well, based on what happened last week I actually went and  
14 looked into that. So I have a better understanding of what it  
15 is and was.

16 Q. You went and looked into what a continuation of service  
17 agreement is?

18 A. Yes, I looked into.

19 Q. Since Friday?

20 A. I looked over the weekend to see what it was exactly.

21 Q. In fact, isn't the continuation of services agreement a  
22 document that customers are asked to sign so that you can use  
23 that document to prevent the chargeback?

24 A. That would be based on the sales office and the decision  
25 they make per each individual customer. That's not something



IB58KET2

Ketabchi - Cross

1 that I would do. It has nothing to do with me. All I do is  
2 get it and just send it to whoever it needs to go to.

3 Q. Whether you did it or not, you have an understanding of the  
4 purpose of the continuation of services agreement, do you not?

5 A. I do at this time.

6 Q. Your testimony is that when you were actually responding to  
7 chargebacks you didn't have that understanding?

8 A. I may have, but I may have not recalled it last week.

9 Because this happened so long ago and I'm not in the business  
10 and it's hard to remember every single file, every  
11 single -- because I have done just so many things and  
12 unfortunately my memory isn't as good as I would like.

13 Q. You requested continuation of services agreements for  
14 purposes of collecting paperwork and responding to chargebacks,  
15 did you not?

16 A. I'm sorry. Can you repeat that, please?

17 Q. Did you collect continuation of services agreements for  
18 purposes of responding to chargebacks?

19 A. I collected them in terms of requesting them from whoever  
20 had them and in whatever office. It was part of the sales  
21 contract. I would get that and send it to the merchant if it  
22 was applicable, but I never did anything else with them.

23 Q. So yes, you collected them for purposes of sending them in  
24 response to chargebacks?

25 A. From what I recall, yes.

IB58KET2

Ketabchi - Cross

1 Q. And your testimony is that when you did that, you didn't  
2 understand the purpose of the continuation of services  
3 agreement?

4 A. From what I recall.

5 Q. OK. Let's take a look at Government Exhibit 234A in  
6 evidence.

7 You see 234 on your screen?

8 A. Yes, ma'am.

9 Q. You see the Post-it there?

10 A. I do.

11 Q. That's your handwriting, isn't it?

12 A. That is correct.

13 Q. You wrote down, "denial response sent 11/24/2015."

14 Is it fair to say these Post-its is how you track the  
15 progress of your response to chargebacks?

16 A. I believe from what I remember, I actually had another  
17 setup where I would keep track of dates of all projects, not  
18 just chargebacks or anything I did for my brother but just  
19 across the board with anything I did in life. And I think when  
20 I printed some of these, I think I just put a note on so I  
21 don't forget what the status is, I believe.

22 Q. You used Post-its on the chargeback documents to track the  
23 status or the progress of your response or the merchant  
24 accounts reversal or denial of the chargeback?

25 A. It could have been other things too. It could have been

IB58KET2

Ketabchi - Cross

1 just to remind me of anything.

2 Q. Let's look at 234B.

3 This is Government Exhibit 234 with different  
4 subparts. These are documents related to the Joseph Freeland  
5 chargeback, correct?

6 A. That is correct.

7 Q. You see Joseph Freeland on this contract?

8 A. I see that, yes.

9 Q. Let's go to 234C.

10 If we could go -- that's fine.

11 So this is your first response dated 11/21/2015.

12 Do you see that?

13 A. Yes.

14 Q. Let's go to 234D.

15 This is another response dated October 29, 2015.

16 Do you see that?

17 A. Yes, I see.

18 MS. FLETCHER: Can we go to the next page, Ms. Lee.  
19 Or 234E, if it's separated.

20 Q. You see the Post-it here at the top of Government Exhibit  
21 234E?

22 A. Yes.

23 Q. "Received 11/4." Then you star two bullets.

24 What do the bullets say?

25 A. Those, I believe, were just a couple of notes.

IB58KET2

Ketabchi - Cross

1 Q. Your notes, right?

2 A. That's my handwriting.

3 Q. What do those notes say?

4 A. "Marketing, and I think CAM. I can't even read my own  
5 handwriting.

6 Q. Company?

7 A. Marketing company, yes. And then web site advertisement is  
8 number two.

9 Q. Those were the products that Mr. Freeland purchased,  
10 correct?

11 A. I don't recall, but I have to see a sales contract to  
12 verify what that pertained to.

13 Q. That's in evidence. Let's take a look at 234B -- 234F, the  
14 next page.

15 You see your Post-it here?

16 A. I do.

17 Q. "Credited back."

18 Do you see that?

19 A. I do.

20 Q. So that means that you have successfully reversed the  
21 chargeback, correct?

22 A. If you give me a moment, let me read the letter to make  
23 sure.

24 Yes, that seems to be the case.

25 Q. Is it fair to say your Post-it again, you're tracking the

IB58KET2

Ketabchi - Cross

1 status of your chargeback response?

2 A. Yes. This is to inform me of what the status is, that is  
3 correct.

4 Q. You're noting that you have won the chargeback, it's been  
5 credited back?

6 A. It has been credited back to A1 Business Consultants, that  
7 is correct.

8 Q. Let's go to the very last page of that document.

9 I see the last Post-it there, again, in your  
10 handwriting?

11 A. Yes.

12 Q. You're writing you need to call to get the status on the  
13 Freeland chargeback?

14 A. Yes.

15 Q. And you have some dates there.

16 What do those dates reflect?

17 A. Let me see. I believe, if I remember correctly, those were  
18 dates regarding what the deadlines were to respond to the  
19 merchant company.

20 Q. Again, you're tracking the status of your response to the  
21 chargeback?

22 A. Yeah. I need to be organized to make sure that I'm getting  
23 everything done properly; otherwise, I won't be effective.

24 Q. Let's pull up what is in evidence as Government Exhibit  
25 242.

IB58KET2

Ketabchi - Cross

1           Mr. Ketabchi, do you remember looking at this document  
2 on Friday?

3 A. I do recall this, yes.

4 Q. This is the complaint, if we look at page 2, this is the  
5 complaint from Michael Deuter.

6           Do you recall that?

7 A. I think I have a recollection, yes.

8 Q. If we can go back to page 1.

9           You testified on Friday, Mr. Ketabchi, that you had  
10 never seen this document before.

11          Do you recall that?

12 A. I do.

13 Q. Is it your testimony that you have never seen this document  
14 before?

15 A. Yeah. I don't recall reading it or analyzing the  
16 information in it. It's possible I may have looked at it, like  
17 glanced at it, but if anything was more than a couple of  
18 sentences in these chargeback things, I just don't read them  
19 because they don't pertain to anything I have done or sold.

20          As I stated, I was just filing. It was just a simple  
21 file processing for me. So it's kind of like if you're in the  
22 office, you're doing secretarial work and your boss says, file  
23 something for me, you just don't have time to read the data  
24 because that's their job, especially when I am in California  
25 and I'm not anywhere in the office, that's just not anything I

IB58KET2

Ketabchi - Cross

1 did.

2 THE COURT: You were just a filer.

3 THE WITNESS: I was either a filer or a responder.

4 Just assessing the data. Because I had my whole -- I had so  
5 much stuff I had to do everyday.

6 THE COURT: It's your testimony that you didn't really  
7 put any thinking into what you were doing, you would just file  
8 things?

9 THE WITNESS: Yes. Especially in terms of this  
10 document, yes.

11 THE COURT: No, in general.

12 THE WITNESS: In general, of course, yeah. But she  
13 was asking specifically.

14 THE COURT: I am asking you in general, you simply  
15 filed things?

16 THE WITNESS: Filed or responded. That was my main.

17 THE COURT: Correct.

18 Q. Let's pull up what has been marked as Government Exhibit  
19 519.

20 You see this e-mail on your screen, Mr. Ketabchi?

21 A. I do.

22 Q. It's an October 28, 2015 e-mail communication between you  
23 and Mr. Bill Sinclair, correct?

24 A. I believe that's correct, yes.

25 Q. Subject, Deuter.

IB58KET2

Ketabchi - Cross

1 A. That is correct.

2 Q. The last name of the individual who made the complaint in  
3 the last document we looked at?

4 A. Yes.

5 MS. FLETCHER: The government offers Government  
6 Exhibit 519.

7 THE WITNESS: Can I explain?

8 THE COURT: Wait for a question, sir.

9 Hearing no objection, admitted.

10 MR. SCHMIDT: If I may, your Honor, review this.

11 THE COURT: Yes, of course.

12 MR. SCHMIDT: No objection.

13 THE COURT: Admitted.

14 (Government's Exhibit 519 received in evidence)

15 BY MS. FLETCHER:

16 Q. Mr. Ketabchi, in this e-mail chain Mr. Sinclair has sent  
17 you the contract for Michael Deuter. Isn't that correct?

18 MS. FLETCHER: Would you scroll down, Ms. Lee, so we  
19 can see the bottom e-mail.

20 Can you see that at the very bottom, Ms. Lee?

21 Q. All the way at the bottom it starts with an e-mail from Mr.  
22 Sinclair to you.

23 You respond, "Thanks, Bill."

24 It looks like he says to you, "Whenever you need a  
25 contract, we will send it to you."



IB58KET2

Ketabchi - Cross

1           You say, "Thanks Bill. If you could have a file with  
2 all of the contracts that you can e-mail me, then I can keep  
3 them and not have to keep asking you."

4           You see that?

5       A. I see that.

6           What was the previous question you asked me about the  
7 contract being attached to this? I don't see a contract  
8 attached to this because there is no attachment.

9       Q. No attachment in this chain, but do you see the e-mail from  
10 Mr. Sinclair to you, subject Deuter, and he says "whenever you  
11 need a contract, we will send it to you?"

12       A. Yes. That was for the deals they had between him and his  
13 brother, so they have to determine who responds.

14           This one seems to reference Deuter. But there is no  
15 information on this contract or anything.

16       Q. Mr. Ketabchi, I would like you to take a look at what has  
17 been marked for identification as Government Exhibit 520.

18           You see that on your screen?

19       MS. FLETCHER: If we can blow up just the e-mail  
20 that's on the first page, Ms. Lee.

21       Q. Mr. Ketabchi, this is an e-mail from you to HIT Marketing  
22 2677 copying your brother Arash.

23           Do you see that?

24       A. Yeah, I see that.

25       Q. It's dated May 10 of 2016?

IB58KET2

Ketabchi - Cross

1 A. I see that.

2 MS. FLETCHER: Government offers Government Exhibit  
3 520.

4 MR. SCHMIDT: We just received it. May I look at it?

5 THE COURT: Yes.

6 MR. PAUL: No objection.

7 THE COURT: Admitted without objection.

8 MR. SCHMIDT: I am not as fast.

9 No objection.

10 (Government's Exhibit 520 received in evidence)

11 MS. FLETCHER: May we please publish the first page of  
12 520.

13 BY MS. FLETCHER:

14 Q. Mr. Ketabchi, this is an e-mail from you to HIT Marketing  
15 2677. It looks like you addressed the e-mail to Jacob and  
16 Robert.

17 Who are Jacob and Robert?

18 A. Is this the same e-mail you just showed me?

19 Q. It is.

20 A. I have no recollection of Jacob and Robert, but I would  
21 assume it was probably the reps that head marketing for  
22 whatever my brother -- it looks like they sent us an agreement  
23 or something and I think he wanted to revise some of the  
24 verbiage or whatever it was, but that's all I can think of at  
25 the moment of what that was.

IB58KET2

Ketabchi - Cross

1 Q. You sent the proposed revised verbiage, didn't you? You  
2 request that the transaction per client be increased to \$10,000  
3 per client instead of 5,000, and you ask for the chargeback  
4 payback period to be extended to 20 days?

5 A. I believe they had sent an agreement to my brother and then  
6 my brother requested to inform them they need to be revised.  
7 So it was nothing that I executed. This is under my brother's  
8 instruction.

9 Q. You sent this e-mail, did you not?

10 A. I sent it, but it's not my information because I'm not the  
11 owner of the business. I'm just doing secretarial tasks.

12 Q. Showing you what has been marked for identification as  
13 Government Exhibit 533.

14 A. If I could expand what I am trying to say. Just because I  
15 am typing something --

16 THE COURT: Sir, just wait for a question. Your  
17 lawyer will have an opportunity to question you. So just  
18 again, let's go back to what we were talking about on Friday.

19 THE WITNESS: I understand.

20 THE COURT: If you can answer a question yes, no, or I  
21 don't know, that's the best way.

22 THE WITNESS: I understand.

23 THE COURT: But if you can't, then you should tell Ms.  
24 Fletcher that.

25 THE WITNESS: I understand.

IB58KET2

Ketabchi - Cross

1 THE COURT: Then she will decide what the next  
2 question will be or whether she wants an explanation from you.

3 THE WITNESS: I understand.

4 THE COURT: Proceed.

5 BY MS. FLETCHER:

6 Q. Do you see 533 up on your screen, Mr. Ketabchi?

7 A. I do.

8 Q. This is an e-mail from you to admin at US Card System  
9 copying your brother, ketabchi.arash?

10 A. I see that.

11 Q. Dated October 20, 2015?

12 A. I see that.

13 MS. FLETCHER: Government offers Government Exhibit  
14 533.

15 MR. SCHMIDT: No objection.

16 MR. PAUL: No objection.

17 THE COURT: Admitted without objection.

18 (Government's Exhibit 533 received in evidence)

19 BY MS. FLETCHER:

20 Q. You see the subject on this e-mail, Mr. Ketabchi, "new  
21 merchant account?"

22 A. I see that.

23 Q. This is from you to Michael -- Michael is Michael Wigdore  
24 at US Card System, isn't that right?

25 A. I believe he works for that company, yes.

IB58KET2

Ketabchi - Cross

1 Q. You ask him, "Can you please call me when you get this at  
2 your cell phone number, 949-244-8588, so we can set up another  
3 merchant account for A1 Business Consultants."

4 Do you see that?

5 A. Yes I do.

6 Q. Mr. Ketabchi, we talked on Friday about Elevated Business  
7 Consultants.

8 Do you recall that?

9 A. I do.

10 Q. If I asked you if you were aware that Elevated was just  
11 another name for A1 Business Consultants.

12 Do you remember that?

13 A. I think I remember that, yeah.

14 Q. You said it wasn't, as far as you were concerned.

15 A. From what I remembered, yes.

16 Q. They were different companies?

17 A. From what I remembered.

18 Q. I want to show you what is in evidence as Government  
19 Exhibit 218.

20 You see the title of this document is registration of  
21 an alternate name?

22 A. Yes.

23 MS. FLETCHER: Ms. Lee, if you can blow up the center  
24 portion of that document.

25 Q. This is a document that purports to change the name of A1

IB58KET2

Ketabchi - Cross

1 Business Consultants, LLC to an alternate name, Elevated  
2 Business Services. Isn't that correct?

3 A. Yes. I believe that may be a d/b/a. So they are actually  
4 separately independent when they file for any type of things.

5 Q. So by d/b/a, you mean Elevated Business Consultants is what  
6 A1 Business Consultants is now doing business as?

7 A. Well, A1 Business Consultants, LLC and then Elevated  
8 Business Services, I believe this registration creates two  
9 different names for the businesses.

10 Q. For the same company?

11 A. I'm not sure if my brother ever filed an Elevated Business  
12 corporation like separately. I don't recall.

13 Q. Wouldn't that have been your responsibility?

14 A. No. I never set up the A1 Business or any of the startup  
15 documentation for him.

16 Q. But this was in your apartment, was it not, printed out?

17 A. It may have been. But when A1 Business Consultants was  
18 launched, I never did any of the startup documents. He did  
19 that in 2014, and a number of months later he asked me if I  
20 could help him with some tasks.

21 Q. Look at the date on this document at the very bottom. It's  
22 dated 10/13/15. This was during the time period that you were  
23 helping your brother?

24 A. I believe it is, yes. What I am trying to communicate is  
25 that A1 Business Consultants was registered in 2014 and we can

IB58KET2

Ketabchi - Cross

1 submit the documents to verify that. And I did not submit  
2 them.

3 Q. OK. Mr. Ketabchi, are you familiar with the Dash's Salon,  
4 LLC?

5 A. I believe that was a corporation that my brother's fiancée  
6 and him set up, from --

7 Q. Your brother's fiancée is --

8 A. -- from my recollection.

9 Q. -- Danielle Owimrin?

10 A. Yes, ma'am.

11 Q. Did there come a time when you assisted Ms. Owimrin in  
12 obtaining a credit card related to her employment at Dash's  
13 Salon?

14 A. I believe, if I remember correctly, I think she asked me to  
15 help her set up like a credit application on a card or  
16 something, like to fill out the form. But I don't remember  
17 fully.

18 Q. Showing you what is in evidence as Government Exhibit 214.

19 MS. FLETCHER: If we can blow up the whole top portion  
20 of that, please.

21 Q. You created this document, didn't you, Mr. Ketabchi?

22 A. Yes. I believe Danielle or my brother or both of them, I  
23 don't remember at this time exactly it was so long ago, but  
24 they told me to draft this letter for Danielle.

25 Q. And the purpose of the letter is to get Ms. Owimrin a

IB58KET2

Ketabchi - Cross

1 credit card, is it not?

2 A. I don't remember exactly what she wanted to use it for, but  
3 I was just told to draft this letter.

4 Q. Let's go to page 2 of that same document.

5 This is a letter from Capital One to Danielle Owimrin  
6 dated May 27 of 2016, isn't it?

7 A. Yes. I think my memory is refreshed now. I think it was  
8 for an application for Capital One.

9 Q. Capital One is asking her in this letter for a verification  
10 of her annual income so she can get a credit card, isn't that  
11 correct?

12 A. I see that, yes.

13 Q. So if you go back to page 1, this is the letter you  
14 prepared in response dated June 12, 2016?

15 A. Yes, based on her instruction.

16 Q. And in that letter you indicate that she has been working  
17 for Dash's Salon for two years and one month and her annual  
18 base salary is \$280,000.

19 Do you see that?

20 A. I typed that for her, but it's not my knowledge or  
21 understanding. It's just simple secretarial typing, drafting  
22 of the letter. I have no information of what her salary is,  
23 what she does, what any of that is.

24 Q. You see the signature on that, it says Danielle Owimrin.  
25 But that's actually Arash's signature, isn't it?



IB58KET2

Ketabchi - Cross

1 A. It looks like it may be.

2 Q. It's the signature you applied to this document?

3 A. I applied that for Danielle, yes.

4 Q. And it is your testimony that when you applied this, you  
5 did not have any information about what Ms. Owimrin's salary or  
6 financial situation was, is that correct?

7 A. I believe she -- for this application I believe she sent me  
8 a, I think I filed it with her taxes, if I remember correctly.  
9 But I didn't review anything. I just processed the file.

10 Q. Let's take a look at what is in evidence as Government  
11 Exhibit 215.

12 THE COURT: Lets me see if I understand.

13 Put that up again.

14 Go to the top. Is that the top?

15 You prepared this document, is that correct?

16 THE WITNESS: Yes, I typed this out.

17 THE COURT: It's as if it came from Dash's Salon, LLC,  
18 is that correct? Because Dash's Salon with its address is on  
19 the upper left.

20 THE WITNESS: Yes. That's what they requested me to  
21 do.

22 THE COURT: Who requested you again?

23 THE WITNESS: Danielle.

24 THE COURT: So Danielle asked you to type this out and  
25 the words are yours, I take it?

IB58KET2

Ketabchi - Cross

1 THE WITNESS: No, these aren't my words. She told me  
2 to type this out for her.

3 THE COURT: And she dictated it?

4 THE WITNESS: Yes.

5 THE COURT: And she told you that her annual salary,  
6 base salary is \$280,000, correct?

7 THE WITNESS: That is correct.

8 THE COURT: Then you applied an electronic signature  
9 of Arash, is that correct?

10 THE WITNESS: Yeah. It looks to be an error on my  
11 end. I guess I had so much going on and I made a mistake.

12 THE COURT: Did you have an electronic signature for  
13 Danielle? I assume not, but I don't know. I don't mean to  
14 suggest it.

15 Did you have an electronic signature for Danielle?

16 THE WITNESS: This is actually done with a pen so it's  
17 not really electronic.

18 Q. Is it fair to say, Mr. Ketabchi, you signed Mr. Arash's  
19 name?

20 A. It seems to be his signature, yeah.

21 Q. And you testified a moment ago that when you prepared this  
22 letter, you believe you had in your possession tax documents  
23 related to Danielle Owimrin, isn't that correct?

24 A. I recall her sending me documents to forward to whatever  
25 the application was for. That's what I can remember, I

IB58KET2

Ketabchi - Cross

1 believe. I don't know for sure. I would have to verify.

2 Q. Let's take a look at what is in evidence as Government  
3 Exhibit 214.

4 This is Ms. Owimrin's tax return, isn't it, sir, for  
5 2014.

6 A. It looks to be a tax return, yes.

7 MS. FLETCHER: If we can go to page 3 and blow up the  
8 top half of the page.

9 Q. Mr. Ketabchi, isn't it a fact that Ms. Owimrin's 2014 tax  
10 return lists her taxable income as \$18,748?

11 A. That looks to be correct.

12 Q. It is your testimony that you wrote the letter that we just  
13 looked at in Government Exhibit 214, that you had these tax  
14 documents, and that you just didn't look at them?

15 A. No, I wasn't verifying her income or anyone's income. She  
16 just said, this is what I want on the letter, here's the  
17 document, and send it to wherever I was supposed to send it to,  
18 if I sent it anywhere.

19 I'm not an accountant doing her taxes. I am doing a  
20 simple task for her, just helping out my brother because she is  
21 the fiance.

22 Q. It is your testimony that Ms. Owimrin told you that her  
23 annual income was \$280,000 and she simultaneously provided you  
24 with a 2014 tax return showing that her income was just over  
25 \$18,000 and you did not notice the discrepancy?

IB58KET2

Ketabchi - Cross

1 A. That is clearly evident, yes.

2 MS. FLETCHER: We can take that down.

3 Q. Mr. Ketabchi, in your role working for your brother, you  
4 testified on Friday that you helped him to fill out  
5 applications of sorts.

6 Do you recall that?

7 A. Yeah, countless of them.

8 Q. I'm sorry?

9 A. Countless.

10 Q. Some of those applications included applications for  
11 additional merchant accounts, isn't that correct?

12 A. That is correct.

13 Q. Let's pull up what is in evidence as Government Exhibit  
14 217.

15 Is this one of the merchant accounts that you helped  
16 fill out, the merchant account applications?

17 A. Let's see. I recall this APS, but actually -- I know that  
18 company, but I don't believe I filled this one out. This one  
19 is actually a Masoud Manesh one. I didn't fill this one out.  
20 It's for Element Business Services.

21 And I think, if I could comment, this was the mix-up  
22 with the d/b/a because Element Business Services is part of  
23 Element Business Services, LLC, which is Manesh, and it wasn't  
24 a link to my brother's A1 Business Consultants. So I think  
25 that is a discrepancy with all of that. But this is nothing I

IB58KET2

Ketabchi - Cross

1 signed or set up.

2 Q. Let's take a look at what is in evidence as Government  
3 Exhibit 222.

4 This is a merchant account application that you filled  
5 out, is it not?

6 A. No, that isn't correct. This is a line of credit from Fox  
7 Funding. This is not a merchant application. And also, my  
8 brother had requested me to see if he could acquire a loan.  
9 And if you notice it says \$499 and the percentage of banking  
10 deposits, so it's clearly a line of credit, like a fintech  
11 company.

12 Q. You filled out an application for your brother.

13 A. Yeah, it was loan application.

14 Q. Let's take a look at Government Exhibit 223 in evidence.

15 How about this one?

16 A. Excuse me. This one is the same as Fox, same type of  
17 company. It's requesting a line of credit, basically a loan.  
18 It's a fintech company. That actually goes back to the  
19 strategic block. I believe it was this company that you showed  
20 before.

21 Q. Let's look at Exhibit 224 in evidence.

22 How about this?

23 A. Same as the last one. I remember Yellowstone. It was a  
24 fintech company.

25 Q. A Manhattan-based company?

IB58KET2

Ketabchi - Cross

1 A. Yeah.

2 If you see in the purchase price \$40,000, that was the  
3 amount of the loan, at 15 percent, for a total payback of  
4 \$58,000 when he was trying to grow the business and market and  
5 everything.

6 Q. Let's take a look at 1105 in evidence.

7 How about this one, sir?

8 A. Could you be so kind if you could -- if I could see if I  
9 remember.

10 BMO? Can you kindly, if you could just scroll down a  
11 little bit.

12 This looks like it's most likely a merchant account  
13 application from what I am gathering.

14 Q. Again, filled out by you, sir?

15 A. I filled this out, yes, ma'am.

16 Q. Let's go to Government Exhibit 202 in evidence.

17 Another business loan application?

18 A. Yeah. This was a loan application.

19 Q. Filled out by you, sir?

20 A. I filled this out, yes.

21 MS. FLETCHER: Ms. Lee, please pull up what is in  
22 evidence as Government Exhibit 163.

23 Q. Mr. Ketabchi, I want to talk about Ms. Jane Thompson.

24 A. Sure.

25 Q. You testified on Friday that you never sent this document

IB58KET2

Ketabchi - Cross

1 to Ms. Jane Thompson, is that correct?

2 A. Yes.

3 Q. You recall you have a specific recollection that you did  
4 not send this document to Jane Thompson?

5 A. I have no recollection that I sent this document to Jane  
6 Thompson, because I never did those electronic signatures from  
7 my memory. They did that in their office.

8 Q. OK. So the electronic signatures was not something that  
9 your brother asked you to do?

10 A. I never recall him asking me to do that.

11 Q. You set up the Adobe account, though, didn't you?

12 A. I did.

13 Q. Let's take a look at Government Exhibit 515 in evidence.

14 You see this March 15, 2016 e-mail from  
15 albusinessconsultations@gmail.com to you?

16 A. I see that.

17 Q. Who used the albusinessconsultations@gmail.com e-mail?

18 A. I believe that was used by their office.

19 Q. By whom in the office?

20 A. Whoever he had help from. I think one of the ladies, one  
21 of the secretarial staff. I think it was Lizette. I think  
22 there was another lady there at some point.

23 Q. This e-mail sets forth the contact information for Ms. Jane  
24 Thompson, correct?

25 A. It seems that way, yes.

IB58KET2

Ketabchi - Cross

1 Q. And the information on her check, correct?

2 A. Yeah, it looks like that way.

3 Q. That check is dated February 4th of 2016 for \$149,000. You  
4 see that?

5 A. I see that, yes.

6 Q. This is information that's being sent to you for purposes  
7 of preparing her contract, is it not?

8 A. I don't recall if that was the case of why they sent me  
9 this. It's been so long I really don't remember.

10 Q. The number \$149,999 is not something that stands out to  
11 you, sir?

12 A. It's a big sale of theirs, yeah.

13 Q. Is it not the biggest sale that came through Al Business  
14 Consultants during the entire time that you were assisting your  
15 brother?

16 A. I am not sure because my brother didn't share his sales  
17 with me in terms of what was the biggest, what was the  
18 smallest, and all those things.

19 Q. Did you see any that was bigger than this one?

20 A. I didn't have access to his sales. I only got the limited  
21 amount of chargebacks. I can't really comment on that because  
22 I'm not in the office and I don't know what their sales are.

23 Q. Let's take a look at Government Exhibit 1128 in evidence.

24 You prepared this document, did you not, Mr. Ketabchi?

25 A. I typed this up for them, yes.



IB58KET2

Ketabchi - Cross

1 Q. Dated February 4, 2016?

2 A. That is correct.

3 Q. Let's go to 1129, please.

4 You prepared this document, too, didn't you, sir, the  
5 \$149,999 contract for Ms. Jane Thompson?

6 A. I don't remember exactly if I set this up for him and the  
7 office, but I would have to verify the files, look at my files,  
8 to see if I did. I just don't remember.

9 Q. This was a Word document on one of your electronic devices,  
10 correct, sir?

11 A. I have to check and verify that.

12 Q. Let's take a look at Government Exhibit 1313 in evidence.

13 After the first letter that you typed up you prepared  
14 a second letter, didn't you, and that's what you are looking at  
15 here, dated April 4 of 2016?

16 A. Yeah, I did that for my brother under his direction.

17 Q. You prepared this document, correct?

18 A. I typed this document with what my brother asked me to  
19 type.

20 Q. And you included in this document an apology that the  
21 initial agreement, the ownership stipulation was missing due to  
22 a clerical error.

23 You typed those words, sir?

24 A. I did type those words.

25 Q. April 4, 2016. And you attached to in letter an updated

IB58KET2

Ketabchi - Cross

1 contract for Ms. Thompson, didn't you, sir?

2 A. I don't recall exactly. I'd have to check my records.

3 Q. Let's take a look at what is in evidence as 1214.

4 This is a shipping label, isn't it, sir?

5 A. It is.

6 Q. Taken, again, from one of your electronic devices,  
7 purporting to ship something to Ms. Jane Thompson.

8 Do you see that?

9 A. I see the shipping label, yes.

10 Q. You see the date on it, April 5, 2016?

11 A. I see that.

12 MS. FLETCHER: May I have a moment, your Honor?

13 THE COURT: Yes.

14 MS. FLETCHER: No further questions.

15 THE WITNESS: It's from A1 Business Consultants.

16 THE COURT: Thank you.

17 Mr. Paul.

18 MR. PAUL: I have a few.

19 THE COURT: Mr. Schmidt, do you have anything?

20 MR. SCHMIDT: I don't have anything.

21 MR. PAUL: Just a few questions.

22 MR. SCHMIDT: If I may, I think it would be more  
23 appropriate for Mr. Paul to go first because based on his  
24 questions I may have a couple of questions.

25 THE COURT: Mr. Paul.

IB58KET2

Ketabchi - Redirect

1 REDIRECT EXAMINATION

2 BY MR. PAUL:

3 Q. Mr. Ketabchi, during the time in assisting your brother  
4 Arash Ketabchi at A1, did you personally purchase any of his  
5 products, and if so, what products were they?

6 A. Let me think here. Yeah. I actually -- I remember -- I  
7 was actually in the vitamin supplement business and they had  
8 launched, I believe it was called Youngevity, and they sold the  
9 same line of products that my company was selling online.

10 Q. That was for Vitamin Pros?

11 A. Yeah.

12 Q. What if anything did you purchase from Youngevity?

13 A. Different supplementation, multi-vitamins. They had a fish  
14 oil that was popular on the market. So I would get those and  
15 then resell them on the Web site.

16 Q. You testified on cross-examination that there was an e-mail  
17 shown between you and Bill Sinclair -- withdrawn.

18 There was an e-mail where you indicated that you did  
19 not want what happened at Olive Branch management to happen at  
20 A1.

21 Do you remember that?

22 A. Yes, I remember that.

23 Q. What if anything was your understanding as to what had  
24 actually happened at Olive Branch?

25 MS. FLETCHER: Objection. Basis.

IB58KET2

Ketabchi - Redirect

1 THE COURT: I will allow it, if you believe you know.

2 A. Just thinking back, I believe my brother at one point  
3 communicated --

4 MS. FLETCHER: Objection.

5 MR. PAUL: What his brother communicated?

6 MS. FLETCHER: 801.

7 THE COURT: I will allow it.

8 Q. You can continue.

9 A. So from my recollection, my brother had communicated that  
10 Bill and Fino weren't managing their business properly, and I'm  
11 all about, you know, customer service, you know, kind of like  
12 Amazon, very customer centric, and my brother launched this and  
13 I wanted his business to be successful. So when he  
14 communicated with me that Bill and Fino's company weren't  
15 executing proper customer service protocols and weren't on top  
16 of fulfillment and weren't following up with customers and they  
17 were no longer being able to service the customers, and I was  
18 very passionate with my brother with communicating with them  
19 that this is the core competency, you must make sure your  
20 customers are getting what they are supposed to be getting,  
21 they are happy, the salespeople are following up. You can't  
22 just sell somebody something and disappear from the face of  
23 earth when it's pretty easy to do in telemarketing and that  
24 would lead to failure.

25 Q. Is that what you meant in your e-mail, if you can recall,

IB58KET2

Ketabchi - Redirect

1 when you said "we have to revise this model?"

2 A. That is precisely what I meant because I always saw him  
3 operating a business services telemarketing company.

4 Q. Now, there was a document shown to you with regard -- I  
5 think it was Exhibit 533 -- where there was a merchant account  
6 being set up.

7 Do you recall that?

8 A. Is it possible I can see it again to make sure because  
9 there were a few of them?

10 Q. Sure.

11 A. Oh, I see that. I think that was with US Card Systems or  
12 something.

13 Q. What if anything, as best you can recall, are you saying  
14 here?

15 A. Just basically my brother had informed me that I need to  
16 get ahold of Michael to see if he could set up a new,  
17 additional merchant account it seems like for his business, and  
18 that is just one of the many tasks he requested me to do.

19 Q. Did you ever set up a merchant account?

20 A. I never personally applied or did anything with A1 Business  
21 Consultants on my name at all. It was all my brother's  
22 business. The only thing I did was just fill out an  
23 application for him and things like that.

24 Q. You were shown exhibits regarding Danielle Owimrin.

25 Do you remember those?

IB58KET2

Ketabchi - Redirect

1 A. Yes.

2 Q. Dash's Salon?

3 A. Yes. I remember those.

4 Q. Who, if anyone, requested that you draw up that letter on  
5 behalf of Danielle Owimrin?

6 A. It was Danielle Owimrin.

7 Q. What exactly -- withdrawn.

8 So the letter you typed up and the information you  
9 placed in that letter, who provided you that information?

10 A. Danielle and my brother.

11 Q. Who provided you, if you could recall, her tax return?

12 A. I believe Danielle sent me those, if I remember.

13 Q. What instructions, if any, did Danielle Owimrin give you  
14 with regard to what she was requesting?

15 A. She just said send the documents to the applicable party.  
16 So that's exactly what I did for her.

17 Q. When the government asked you, Ms. Fletcher asked you about  
18 the tax showing X number, certainly not matching up with the  
19 number that you put in the letter, did you at all read these  
20 documents or interpret these documents before passing them on?

21 MS. FLETCHER: Objection to form.

22 THE COURT: Sustained as to form.

23 Q. What, if anything, did you do with these documents when you  
24 received them from Danielle Owimrin?

25 A. I didn't analyze anything.

IB58KET2

Ketabchi - Recross

1 THE COURT: No. What did you do, not what did you not  
2 do.

3 What you did you do, if anything, before passing them  
4 on?

5 A. I didn't do anything because all I needed to do is, I think  
6 may have scanned it if it was going to an e-mail address and  
7 just sent it out. I'm not an accountant.

8 MR. PAUL: I have no further questions, your Honor.

9 MS. FLETCHER: Very brief recross.

10 THE COURT: Very brief.

11 MR. SCHMIDT: I have no questions.

12 THE COURT: Thank you, sir.

13 RE CROSS-EXAMINATION

14 BY MS. FLETCHER:

15 Q. Mr. Ketabchi, you just testified that you are passionate  
16 about customer service. Is that right, sir?

17 A. Yes.

18 Q. You wanted to be sure that your brother's business was  
19 running smoothly and he was doing everything properly, is that  
20 correct?

21 A. As his brother, I wanted him to do his best to do that  
22 best.

23 Q. Isn't it your testimony, sir, when you were fighting or  
24 responding to these chargebacks that you didn't care whether  
25 you won or lost them, you just wanted to be sure that the

IB58KET2

Ketabchi - Recross

1 customer was happy?

2 A. Can you repeat that question?

3 (Continued on next page)

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25



IB5JKET3

Ketabchi - recross

1 Q. Is it your testimony, sir, that when you were responding to  
2 these charge-backs, that you didn't care whether you won or you  
3 lost, that you just wanted the customer to be satisfied and  
4 happy?

5 A. Well, in terms of charge-backs, the end goal is always to  
6 try to resolve the dispute to make sure that whatever happened  
7 in that sales transaction in their office is corrected and  
8 rectified so at the end of the day the client, the customer is  
9 happy and satisfied. That's the main purpose of a charge-back.

10 Q. So you wanted the customers to be satisfied. Is that your  
11 testimony?

12 A. Yeah, that is always the case in any business.

13 Q. You didn't want to just win the charge-back?

14 A. Well, when you -- it is kind of -- I am trying to see how  
15 to explain this. When you're given a task --

16 Q. Mr. Ketabchi, did you or did you not want to win the  
17 charge-back?

18 A. I am not able to answer that question unless I have an  
19 explanation. It is not a yes or no because it can lead to a  
20 false conclusion.

21 Q. Can we please pull up, Ms. Lee, what is in evidence as  
22 Government Exhibit 1011. This is a text message conversation  
23 between you and your brother, isn't it, Mr. Ketabchi?

24 A. Can I see the left more so I can make sure I can answer  
25 that properly.

IB5JKET3

Ketabchi - redirect

1 Q. Ms. Lee, just pull up the bottom three lines.

2 Arash tells you one charge-back I'm dead, correct?

3 That is the message from Arash to you?

4 A. I see that, yes.

5 Q. And you respond, well, we have to fight them and win.

6 Didn't you say that, sir?

7 A. I can answer that with an explanation.

8 THE COURT: Well, did you say that, yes or no?

9 THE WITNESS: I obviously wrote that, yes.

10 THE COURT: Next question.

11 MS. FLETCHER: No further questions.

12 REDIRECT EXAMINATION

13 BY MR. PAUL:

14 Q. What is your explanation with regard to this text, please?

15 A. Basically when there is a charge-back dispute, the most  
16 important goal of any business is to make sure you're taking  
17 care of your customers. That is just number one.

18 Anybody who goes to any business school and has been  
19 in business knows that. If don't do that, you're not going to  
20 make it. When you get a charge-back from a customer, sometimes  
21 the sales and the company may have given everything they were  
22 supposed to to the client, and some people just dispute them  
23 because they want to get their money back, they don't believe  
24 they got everything they were supposed to.

25 So when they file a charge-back, the goal of the

IB5JKET3

Ketabchi - redirect

1 company is also to resolve the problem, and the only way to do  
2 that is to win them. So winning them doesn't mean you don't  
3 want the customer to be happy as a general goal of a business.  
4 You can take this out of context and think oh, we're not -- I'm  
5 not thinking about the customers or my brother doesn't care  
6 about customers, but that is 100 percent absolutely not true.  
7 It is like if you're playing football, you know, your goal is  
8 to win the charge challenge. It is the same thing when you  
9 have a dispute in a charge-back.

10 So there is a lot of variables of why charge-backs  
11 occur in the first place. It could be because the customer  
12 doesn't have accurate information.

13 MS. FLETCHER: Objection, your Honor.

14 THE COURT: Go ahead.

15 THE WITNESS: Also the sales office didn't execute the  
16 fulfillment. There are too many variables to make a  
17 determination on the word, "win."

18 MR. PAUL: No further questions.

19 THE COURT: Anything?

20 MS. FLETCHER: No, your Honor.

21 THE COURT: Mr. Ketabchi, you may step down, sir.

22 (Witness excused)

23 THE WITNESS: Thank you, your Honor. Thank you for  
24 the opportunity.

25 THE COURT: Next witness for Shahram Ketabchi, Mr.

IB5JKET3

Finocchiaro - direct

1 Paul.

2 MR. PAUL: Yes, your Honor. The defendant calls  
3 Michael Finocchiaro.

4 MICHAEL FINOCCHIARO,

5 called as a witness by the Defendant,

6 having been duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 Q. Mr. Finocchiaro, good morning.

9 A. Good morning.

10 Q. Have we ever met before?

11 A. The other day briefly outside.

12 Q. Was that when you refused to talk to me?

13 A. That's what I was directed by my lawyer.

14 Q. But you have talked to the government, I assume?

15 A. Yes, that's correct.

16 Q. Could you tell us what is your employment history?

17 A. I've worked for telemarketing companies for over the last  
18 decade at the Tax Club as well as Olive Branch, and currently I  
19 am in medical device sales.

20 Q. Where was Tax Club located?

21 A. That was in the Empire State Building, 460.

22 Q. How long did you work there?

23 A. I don't know the exact years I was, three to four years.

24 Q. What was your role, if any, while you were working there  
25 for three or four years?

IB5JKET3

Finocchiaro - direct

1 A. I was a representative, just salesman at the time.

2 Q. A salesperson?

3 A. Yes.

4 Q. What was the business of Tax Club specifically? What was  
5 the business that they engaged in?

6 A. It was called biz-op.

7 Q. Was this another telemarketing company, I assume?

8 A. Yes, that's correct.

9 Q. After you left Tax Club -- by the way, did you know an  
10 individual by the name of Bill Sinclair?

11 A. Yes, sir.

12 Q. Was he also working at Tax Club while you were working  
13 there?

14 A. That's correct, yes.

15 Q. What, if any, legal problems, if you know, did the Tax Club  
16 face while you were working there?

17 A. While I was working there?

18 Q. Yes.

19 A. I know there was one of the vice presidents I believe of  
20 the company had some legal issues with a car wreck involving  
21 his father. When I left, they were having issues.

22 Q. What kind of issues did you learn of after you left?

23 A. FTC issues for just certain type of sales practices.

24 MS. FLETCHER: Is there any way to ask Mr. Finocchiaro  
25 to move the mike a little bit away from his mouth. I think it

IB5JKET3

Finocchiaro - direct

1 is creating this hissing feature.

2 THE COURT: I wondered what that was.

3 MS. FLETCHER: Every time he gets close.

4 THE COURT: Mr. Finocchiaro, now that I've asked you  
5 to bring the Mike close to your face, I am going to ask you to  
6 move it away.

7 THE WITNESS: Yes your Honor.

8 MR. PAUL: You can't win.

9 THE COURT: I thought that was somebody's assisted  
10 hearing device. Thank you.

11 BY MR. PAUL:

12 Q. You said they had FTC issues?

13 A. Yes, that's right

14 Q. After you left Tax Club, where did you go to work?

15 A. At that point, we were down the Wall Street area. We tried  
16 to start a coaching company.

17 Q. Who is we?

18 A. My partner at the time, Bill Sinclair, and there were two  
19 other gentlemen, Jeff Fisher and Preston -- I forget last --  
20 Preston Clark.

21 Q. What does a coaching company do?

22 A. A coaching company is where you are taking an inexpensive  
23 lead that can be anywhere from 50 cents, 10 cents, 50 cents, a  
24 dollar, really up to about a couple of dollars that you're  
25 going to thousands of these leads and trying to find which

IB5JKET3

Finocchiaro - direct

1 clients have money to invest into the biz-op venture and  
2 ultimately are sold services.

3 Q. So you were selling services involving coaching for the  
4 biz-op?

5 A. Yeah, coaching, explaining what they needed to do  
6 step-by-step to make money, and to my knowledge, it was a while  
7 ago, I believe that we might have done like a website,  
8 something of that nature. I don't recall offhand.

9 Q. Do you recall if those customers made any money?

10 A. No, they did not.

11 Q. Where did you go after you left this coaching company with  
12 Bill Sinclair?

13 A. At that point we started our own venture which actually we  
14 went to my old manager, Brian Hult had a company in Clifton, we  
15 made a brief stop there and ultimately tried to get the  
16 coaching off the ground.

17 Q. This was at Olive Branch?

18 A. It wasn't Olive Branch yet.

19 Q. When did you set up Olive Branch?

20 A. Olive Branch was right after that. I am not a hundred  
21 percent on the date, 2012 or 13, give or take.

22 Q. Who did you set Olive Branch up with? Who was your  
23 partner?

24 A. Bill Sinclair.

25 Q. So Bill Sinclair remained as your partner since you left

IB5JKET3

Finocchiaro - direct

1 Tax Club. Is that fair?

2 A. That is correct.

3 Q. Primarily what was your job when you worked at Olive Branch  
4 Management?

5 A. At Olive Branch, I was in charge of doing saves, which is  
6 keeping customer retentions as well as charge-backs.

7 Q. Keeping customers what?

8 A. Keeping customers on board if they tried to cancel.

9 Q. When you say "saves," it was your job to save that  
10 customer, to keep him on board and to continue to invest?

11 A. Ultimately, I morphed into that position because there  
12 would be an excessive amount that I would have to help because  
13 the employees were supposed to, but it just got overwhelming  
14 that I had to handle it.

15 Q. So it fell upon you to handle these what you call saves.  
16 Is that right?

17 A. Most of the time.

18 Q. You said you also handled charge-backs?

19 A. That's correct.

20 Q. Can you explain in your mind what a charge-back is.

21 A. A charge-back is when a client who is initially sold  
22 services decides to cancel, and there is many different reasons  
23 they could cancel.

24 Q. Such as?

25 A. "I never signed up for this, I don't recall giving this, I



IB5JKET3

Finocchiaro - direct

1 was promised I was going to make money, I can't do this any  
2 more, I don't have funds." Those were the main three that I  
3 remember.

4 Q. Now, was there a certain demographic of customers or  
5 clients that were reached out to, and if so, how would you  
6 describe that demographic?

7 A. The demographic was middle America, elderly most of the  
8 time. That's the leads we would get.

9 Q. Why would they be good customers for you to reach out to?

10 MS. FLETCHER: Objection to form.

11 THE COURT: I'll allow it.

12 A. Just because the thought process was people in bigger  
13 cities are more in tune with these kind of -- they weren't as  
14 gullible.

15 THE COURT: I am not sure who you're casting as the  
16 gullible people. Say it again so I understand it.

17 THE WITNESS: They felt that people in bigger cities  
18 were not as gullible as some of the clients in middle America.

19 BY MR. PAUL:

20 Q. So middle America, in your view, were easier targets. Is  
21 that fair?

22 A. That's correct.

23 Q. Now, given the legal problems that the Tax Club faced as  
24 you told us you learned, what, if any, roles were set up at  
25 Olive Branch Management to avoid similar legal problems?

IB5JKET3

Finocchiaro - direct

1 A. What we did was we had call monitoring for a brief period  
2 of time. We also had specific rules like earnings claims. You  
3 could not make a blatant earnings claim, and also just to make  
4 sure that someone was of sound mind and could make a decision  
5 for themselves.

6 Q. What was the purpose of these rules?

7 A. To maintain some sort of a structure as opposed to just a  
8 free-for-all.

9 Q. What would be your concern if you were in a free-for-all?

10 A. That we would get the authorities to look into what was  
11 going on.

12 Q. So these rules that you set up were really to, in essence,  
13 keep you off the radar of law enforcement. Is that fair?

14 A. Yes, that's fair.

15 Q. How, if at all, were these rules implemented at Olive  
16 Branch so everyone working there could follow them?

17 A. It was difficult to listen to everyone's calls, but my  
18 partner Bill, as myself, we would always try to keep our ears  
19 open. If we heard anything, we would yell out and correct the  
20 salesperson, but we also had a call monitoring system in place  
21 that there would be random calls that were monitored, and then  
22 finding the issue.

23 Q. You told us you were partners with Bill Sinclair at Olive  
24 Branch. Were you and Bill the owners of this company?

25 A. Yes, that's correct.

IB5JKET3

Finocchiaro - direct

1 Q. Who was the sales manager at Olive Branch?

2 A. Arash Ketabchi.

3 Q. How did you know Arash Ketabchi?

4 A. I met him while I was at the Tax Club going back to 2008 or  
5 9, in that time-frame.

6 Q. You brought him with you to Olive Branch, you and Bill?

7 A. We didn't bring him initially. I guess he was living out  
8 West, and he came back, so then Bill called me and said I have  
9 a surprise for you today, and then he showed up.

10 Q. You said one of your jobs at Olive Branch was to deal with  
11 charge-backs in addition to these saves you described.

12 What, if anything, would you do to combat  
13 charge-backs?

14 A. What I would first do is call the client initially to try  
15 and put out any fires or any issues that were occurring. We  
16 would also have to gather whatever was sold, we would have to  
17 show sufficient proof that we could send in to the merchant  
18 account, the credit card company so we could show proof to get  
19 the charge-back overturned.

20 Q. Where would you get this proof from?

21 A. We had a fulfillment company.

22 Q. So you would reach out to the fulfillment people to send  
23 you documents to show proof of these customers getting what  
24 they contracted for. Is that fair?

25 A. That's fair.

IB5JKET3

Finocchiaro - direct

1 Q. What about contracts, would you attempt to locate the  
2 contract?

3 A. That's correct as well. I didn't add that. I should added  
4 that.

5 Q. That is a pretty crucial part of what you had to do with  
6 regard to responding to charge-backs. Is that not fair?

7 MS. FLETCHER: Objection to form.

8 THE COURT: Sustained as to form.

9 BY MR. PAUL:

10 Q. Would it be fair to say that reaching out to the  
11 fulfillment people to get hold of the signed contract was one  
12 of the many things you had to do with regard to fighting the  
13 charge-backs?

14 A. That's not what the contract is for.

15 Q. Where were the contracts?

16 A. They were on the floor with us.

17 Q. The contracts were physically at your office. Is that  
18 right?

19 A. That's correct.

20 Q. The fulfillment people were those who sent documents --  
21 withdrawn -- sent proof to you that these customers received  
22 what they contracted for?

23 MS. FLETCHER: Objection to form.

24 THE COURT: I'll allow it.

25 Q. Is that fair?

IB5JKET3

Finocchiaro - direct

1 THE COURT: I am sorry. I am sorry. Given the  
2 sidebar, sustained.

3 BY MR. PAUL:

4 Q. With regard to the contract, what would you do to locate  
5 the contract?

6 A. I would ask a secretary. She was in charge of all that.  
7 She would pull it up on the computer.

8 Q. She would pull it up?

9 A. Yes.

10 Q. What would you do after receiving or locating the contract  
11 in your office with regard to the fulfillment people?

12 A. I am sorry?

13 THE COURT: What would you next do after locating the  
14 contract in your sales floor?

15 THE WITNESS: After the contract, we would reach out  
16 to fulfillment to make sure that whatever was sold, that we can  
17 show some sort of proof that the customer received what it was  
18 that they paid for.

19 BY MR. PAUL:

20 Q. What would you do after you've gathered the contract and  
21 the documents you received from the fulfillment, what, if  
22 anything, would you do with that?

23 A. At first we would try to put out the fire, use that as  
24 ammunition. If the client was saying hey, I never did this or  
25 whatever the reason is you can show me look, you signed this

IB5JKET3

Finocchiaro - direct

1 or -- you always try to put the fire out at first if you could.

2 If not, then you have to send it into the credit card  
3 company.

4 Q. That would be the contract and the fulfillment documents  
5 you received. Is that right?

6 A. That's correct.

7 Q. Now, if there was no contract to be located, what, if  
8 anything, would you do with regard to the charge-back?

9 A. In that situation, I would call, I would still make the  
10 call to the client and try and reason with them to keep them on  
11 board however, whatever needed to be said to put them at ease.

12 Q. Even without a contract?

13 A. Yes, that's correct.

14 Q. Who was Ray Quiles?

15 A. He was a fulfillment manager in charge of providing  
16 services that we sold.

17 THE COURT: Is he with Olive Branch?

18 THE WITNESS: He actually was a separate entity, but  
19 he worked with us.

20 BY MR. PAUL:

21 Q. If you know, what was the grant program?

22 A. The grant program is a program that you are basically  
23 making promises, you're making promises to a client that you're  
24 going to get some sort of government grant, whether it be  
25 ex-military or senior citizen, there was a list of different

IB5JKET3

Finocchiaro - direct

1 reasons, and you promise them they're going to make X amount of  
2 money, but they would have to pay X amount of money.

3 Q. So they would have to pay X amount of money to get into  
4 this grant program, you promise them in return for their  
5 investment they would receive X amount of money. Is that fair?

6 A. That's fair.

7 Q. Did you have such a program at Olive Branch?

8 A. Yes, we did.

9 Q. Would it be fair to say, sir, that the -- what was your  
10 understanding as to what the customer would end up with if they  
11 invested in this grant program?

12 A. Pretty much nothing, maybe a piece of -- a grant packet  
13 that I have personally never seen, but that is what I was told  
14 they would get from people in fulfillment.

15 Q. So how long did you have this grant program in existence at  
16 Olive Branch?

17 A. There are two separate occasions.

18 Q. Let's take the first occasion.

19 A. Okay. We had a floor, a group, another company from  
20 Arizona come out to show us how to do the process. It was  
21 short-lived, I want to say two weeks, maybe three weeks, but I  
22 remember there were issues with money, where we never got paid,  
23 so that it abruptly ended.

24 Q. It ended as a result of a money issue. Is that fair?

25 A. Yes, that is fair.

IB5JKET3

Finocchiaro - direct

1 Q. How is selling customers grants any different than the  
2 other products you were selling to them from Olive Branch?

3 A. The grant program was, I felt, a quicker way to get  
4 authority's attention because it was to blatant.

5 THE COURT: So blatant what?

6 THE WITNESS: Just that there was nothing they  
7 received, the clients.

8 BY MR. PAUL:

9 Q. With regard to the other products you were selling, was  
10 there something that the clients were receiving?

11 A. They would receive depending on what they bought.

12 Q. So the products you were selling, other than the grant  
13 program where they got nothing, they would receive something  
14 with regard to the other products you were selling. Is that  
15 fair?

16 A. That's fair, yes.

17 Q. The people who were working and selling the grants, you  
18 said these were the people you brought over from Arizona. Is  
19 that right?

20 A. That's correct.

21 Q. Do you know the names of those individuals?

22 A. The head of the company was Carl Morris, from what I  
23 remember, and there was Richard Frost and Ray Abelos. I don't  
24 know if I am pronouncing that correctly. Those are the three I  
25 remember



IB5JKET3

Finocchiaro - direct

1 Q. When you were at Tax Club, did you have an understanding  
2 whether grants were being sold and, if so, what was your  
3 understanding as to how successful the selling of grants were  
4 at Tax Club?

5 A. Grant leads always were problematic for the fact that they  
6 would cancel eventually, so they're easy to sell, but they come  
7 with major headaches, so everyone kind of -- no one really  
8 wanted them to start.

9 Q. But did they sell them at Tax Club?

10 A. When they came in, there would be different batches of  
11 leads that would come in, and if you received them, you had no  
12 choice but to sell them.

13 Q. Now, knowing that selling grants was a fraud, and you told  
14 us that, what, if anything, did you think would happen to Olive  
15 Branch if you got caught by the authorities?

16 MS. FLETCHER: Objection to form.

17 THE COURT: Sustained.

18 BY MR. PAUL:

19 Q. What was your understanding that potentially could happen  
20 at Olive Branch by selling these grants?

21 A. That we would get in trouble, have legal issues with  
22 potentially getting arrested.

23 Q. Was FTC also on your mind?

24 A. Absolutely.

25 THE COURT: FTC is the Federal Trade Commission. Is

IB5JKET3

Finocchiaro - direct

1 that correct?

2 THE WITNESS: Yes, your Honor.

3 Q. Did you know a Brooke Marcus? And, if so, who was she?

4 A. I can't say for certain, but I do remember the name. I  
5 believe she was a lead, one of the lead, like in between like  
6 from a lead company.

7 Q. Did you know a Heidi? And if so, who was she?

8 A. Again, I remember the name and I believe she was another  
9 lead in-between, like a contact.

10 Q. Are you aware of complaints against Olive Branch Management  
11 that went to the attorney general offices and, if so, how did  
12 you respond to them?

13 A. Yes, I have, and for the AG complaints, I originally would  
14 try and handle it myself by sending in, fighting them as a --  
15 show proof if it was like a charge-back, and I remember I was  
16 uncomfortable, so we hired an attorney to handle these kind of  
17 issues.

18 Q. Who was that attorney?

19 A. His name was Vafa Sarmasti.

20 Q. What is your understanding as to how the lawyer that you  
21 retained would respond to these complaints?

22 MS. FLETCHER: Objection.

23 THE COURT: Sustained. You hired him to respond to  
24 the complaints. Is that correct?

25 THE WITNESS: That wasn't the only reason, but I was

IB5JKET3

Finocchiaro - direct

1 out of my comfort zone, where I just felt uncomfortable  
2 speaking to any AG, so he would handle them and write whatever  
3 he needed to write to resolve the issue.

4 BY MR. PAUL:

5 Q. Was part of the job of the retained lawyer also to respond  
6 to charge-backs, if you know?

7 A. For the most part, no, but I am sure there has been issues.  
8 I just can't recall specifically where he would have helped.

9 Q. And you paid this lawyer on a retainer. Is that right?

10 A. That's correct.

11 Q. Were you billed on a monthly basis?

12 MS. FLETCHER: Objection.

13 THE COURT: How were you billed?

14 THE WITNESS: My partner, Bill, handled most of that,  
15 but I believe it was monthly sometimes.

16 THE COURT: Don't guess. The jury isn't interested in  
17 guessing. On the other hand, if you have reason to believe,  
18 sir, something is true, you should let the jury know that.

19 My question was how were you billed? Do you know? Do  
20 you have a belief as to how Olive Branch was billed by  
21 Sarmasti?

22 THE WITNESS: Yes, your Honor. He would be sent an  
23 invoice through the email.

24 BY MR. PAUL:

25 Q. Would this invoice lay out the hours of the lawyer, what he

IB5JKET3

Finocchiaro - direct

1 was doing with regard to --

2 THE COURT: What did the invoice contain, if you know?

3 THE WITNESS: That was something that my partner,  
4 handled. I don't recall specifically what the breakdown was.

5 BY MR. PAUL:

6 Q. Do you recall communicating with the lawyer at any time as  
7 the retained attorney while you were at Olive Branch and, if  
8 so, what would those communications have been?

9 MS. FLETCHER: Objection, your Honor.

10 THE COURT: Sustained.

11 Q. Did you communicate with the lawyer at any time?

12 A. I am sorry. Can you be more clear.

13 THE COURT: Did you talk or email with Sarmasti?

14 THE WITNESS: Yes, I did.

15 BY MR. PAUL:

16 Q. What would the subject matter, if at all, as you can  
17 recall, pertain to?

18 MS. FLETCHER: Objection, your Honor.

19 THE COURT: I will allow that. Do you know, was it  
20 charge-backs? Saves? What was it?

21 THE WITNESS: It was at one point we had a lawsuit  
22 that we were filing against ex-employees, your Honor.

23 THE COURT: Olive Branch was suing employees?

24 THE WITNESS: Yes, your Honor.

25 THE COURT: Go ahead.

IB5JKET3

Finocchiaro - direct

1 THE WITNESS: That was a reason that we would use him  
2 and mainly for AG complaints or I remember we fired someone and  
3 we just wanted counsel on how to do it properly.

4 BY MR. PAUL:

5 Q. Do you recall whether you had communications with him  
6 concerning charge-backs and, if so, what were they?

7 MS. FLETCHER: Objection.

8 THE COURT: I will allow the first part of that.

9 Q. Did you have communications with the lawyer regarding  
10 charge-backs?

11 MS. FLETCHER: Asked and answered, your Honor.

12 THE COURT: Yes or no?

13 THE WITNESS: I don't recall specifically.

14 THE COURT: All right. Next.

15 BY MR. PAUL:

16 Q. May I show you what has been previously marked as SK-1 for  
17 identification purposes and see if you could just look at the  
18 highlight and see if that refreshes your recollection?

19 THE COURT: Now, sir, it is not what is written there.  
20 What is written there in a way doesn't matter. The only issue  
21 is does looking at that refresh your recollection, because you  
22 just said you don't recall whether you had communications with  
23 Sarmasti regarding charge-backs. Do you have your refreshed  
24 recollection now?

25 THE WITNESS: If I may have a minute, please?

IB5JKET3

Finocchiaro - direct

1 THE COURT: Oh, yes, of course.

2 (Pause)

3 THE WITNESS: Yes, that seems accurate, your Honor.

4 THE COURT: No, not that seems accurate.

5 Now that looking at that has refreshed your  
6 recollection, do you recall speaking with Sarmasti in regard to  
7 charge-backs?

8 THE WITNESS: I don't recall, but if it is on there --

9 THE COURT: No, no, no. If you don't recall, you  
10 don't recall. Next.

11 BY MR. PAUL:

12 Q. So reading that does not refresh your recollection?

13 THE COURT: Asked and answered. Next.

14 Q. Do you know whether or not Mr. Sarmasti, the attorney, was  
15 made aware about the charge-back complaints at Olive Branch  
16 and, if so, how?

17 MS. FLETCHER: Objection.

18 THE COURT: Sustained.

19 BY MR. PAUL:

20 Q. Would you agree that Mr. Sarmasti was practically on the  
21 payroll at Olive Branch and, if so, why would you come to that  
22 conclusion?

23 THE COURT: Sustained, sustained, sustained, without  
24 the government rising.

25 MR. PAUL: I don't believe that is a leading question,

IB5JKET3

Finocchiaro - direct

1 your Honor.

2 MS. FLETCHER: That wasn't the basis for the  
3 non-standing objection.

4 THE COURT: The government has objected. The court  
5 has sustained the objection.

6 MR. PAUL: Because of leading?

7 THE COURT: Sustained, sir. Move on. Do you want a  
8 sidebar? Let's have a sidebar.

9 (Continued on next page)

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

IB5JKET3

Finocchiaro - direct

1 (At sidebar)

2 THE COURT: I have given you plenty of leeway here.

3 Your specific representation to the Court, sir, when  
4 we had an extended sidebar on this, or it may have been in open  
5 court without the jury, is that your questions to Mr.  
6 Finocchiaro in regard to Sarmasti would be limited to the  
7 questions that you asked Sinclair on 658, 659. You are way  
8 beyond that at this point.

9 MR. PAUL: Okay. Judge, can I just put something on  
10 the record also I was meaning to?

11 THE COURT: Of course.

12 MR. PAUL: I realize I was in the doghouse on Friday  
13 with your Honor, but I think having seen my client up close and  
14 personal, I think your Honor might have a better understanding  
15 why often I had to lead my witness rather than use direct  
16 because we would still be here on direct examination otherwise.

17 THE COURT: I do have a better sense of that.

18 MR. PAUL: Thank you.

19 THE COURT: I won't make any comment about the  
20 doghouse. I must say that when I asked what was the universe,  
21 and he looked at me and said I am not an astrophysicist --

22 MR. PAUL: He talked about the stars and moon.

23 THE COURT: I thought he may have been joshing.

24 MR. PAUL: I remember.

25 THE COURT: I was astonished. In the course of the



IB5JKET3

Finocchiaro - direct

1 afternoon, I realized there was a substantial chance he was not  
2 joshing, he takes things very literally.

3 MR. PAUL: Correct.

4 THE COURT: And that did change my perception of this  
5 answers.

6 MR. PAUL: Thank your Honor. I hope your perception  
7 of my examination of him as well?

8 THE COURT: In order to have you expedite this, I  
9 won't comment on that.

10 MR. PAUL: Okay.

11 (Continued on next page)  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

IB5JKET3

Finocchiaro - direct

1 (In open court)

2 BY MR. PAUL:

3 Q. You testified about these attorneys general complaints.

4 What, if anything, would you do when there was such a  
5 complaint filed?

6 A. At first I attempted to resolve it myself by calling, and I  
7 was uncomfortable from my initial reaction, that we had our  
8 attorney handle them after we received a couple.

9 Q. Was there an effort at Olive Branch to convince customers  
10 to pay by check and, if so, why?

11 A. It happened, but it wasn't common practice.

12 Q. I am sorry. It happened but what?

13 A. It wasn't the norm, the normal procedure to do so.

14 Q. Why would you do so?

15 A. In the event that -- for one, if there was no credit card,  
16 they can write a check, but it also depends on what time of the  
17 business we were doing this at because at certain points we  
18 were trying to have clients write what is called a balance  
19 transfer check, where they would get it from the credit card  
20 and write it because those type of transactions, you weren't  
21 able to charge-back on or it was very difficult to do so.

22 Q. So it was an effort to avoid charge-backs. Is that fair?

23 A. That's fair.

24 Q. If there was no charge-back possible because Olive Branch  
25 perhaps was paid by check, how would the customer in that

IB5JKET3

Finocchiaro - direct

1 circumstance be able to get their money back, if at all?

2 A. It would be very difficult.

3 Q. Would one of the ways perhaps be by filing a complaint with  
4 the attorneys general office?

5 A. It is a possibility, yes.

6 Q. By the way, sir, what, if anything, happened to you in  
7 March of 2017?

8 A. I was arrested.

9 Q. What were you arrested for?

10 A. For committing wire fraud, money laundering as well as  
11 narcotics distribution.

12 Q. Distribution of what?

13 A. Oxycodone.

14 Q. Did you shortly thereafter your arrest meet with the  
15 government and, if so, what was the purpose of such a meeting?

16 A. It was, I don't know the exact time, but a month, a couple  
17 of months maybe, and it was to admit to what I was in trouble  
18 for and to ultimately cooperate.

19 Q. To ultimately get a cooperation agreement?

20 A. I am sorry?

21 Q. To ultimately get a cooperation agreement from the  
22 government?

23 A. I wasn't promised anything, but ultimately if I was  
24 truthful, it could potentially lead to that if I was truthful.

25 Q. If you were truthful based on whose determination, the

IB5JKET3

Finocchiaro - direct

1 government?

2 A. No, just telling the truth.

3 Q. Who would offer you the cooperation agreement?

4 A. It --

5 MS. FLETCHER: Objection to form.

6 THE COURT: I'll allow that if you understand it.

7 A. Can you say that again?

8 Q. Did you eventually sign a cooperation agreement?

9 THE COURT: Did you sign an agreement with the  
10 government?

11 THE WITNESS: Yes, I did.

12 THE COURT: Do you remember what that agreement said  
13 in general terms?

14 THE WITNESS: Yes, your Honor. To my knowledge, I had  
15 to tell the truth about what transpired over the last years of  
16 operating the telemarketing business, all my business dealings,  
17 and I also had to admit to past transgressions, crimes that  
18 I've done, and I was not promised anything except for the fact  
19 that the Southern District would not prosecute me for some of  
20 the crimes that I did admit to.

21 THE COURT: Mr. Paul, you said, sir, you had to tell  
22 the truth about what transpired, correct?

23 MR. PAUL: You misspoke. Mr. Finocchiaro.

24 THE COURT: I am sorry. Mr. Finocchiaro. I  
25 apologize. Mr. Paul asked you owe -- sorry. Let's start

IB5JKET3

Finocchiaro - direct

1 again. You said you had to tell the truth, that was in your  
2 agreement, correct?

3 THE WITNESS: Yes, your Honor.

4 THE COURT: Mr. Paul asked you before who decides  
5 whether or not you tell the truth?

6 THE COURT: If you know?

7 THE WITNESS: The Judge, I believe,.

8 THE COURT: All right.

9 BY MR. PAUL:

10 Q. According to your cooperation agreement with the  
11 government, in return for cooperating with them, what is your  
12 understanding as to what will happen?

13 A. If I live up to my end and give a truthful account of what  
14 transpired, I could potentially receive what is called a 5K1  
15 letter.

16 Q. What is your understanding of what a 5K1 letter is?

17 A. That gives the judge the ability to sentence under the  
18 guidelines for the crimes.

19 Q. How much time, as best you -- withdrawn.

20 THE COURT: When you say "under the guidelines," do  
21 you mean below the guidelines? Is that what you mean?

22 THE WITNESS: Yes, sir, that's correct.

23 THE COURT: All right.

24 BY MR. PAUL:

25 Q. I started asking you before about your meetings with the

IB5JKET3

Finocchiaro - direct

1 government. Approximately how many times, if you can recall,  
2 did you meet with the government before you agreed to a  
3 cooperation agreement?

4 A. I want to say about four to five times.

5 Q. How many times did you meet with the government after  
6 signing the cooperation agreement?

7 A. Maybe about seven times.

8 Q. When was the most recent time you met with the government?

9 A. It was last week.

10 Q. About a week ago?

11 A. Yes, sir.

12 Q. What was the purpose of that meeting?

13 A. Just to --

14 THE COURT: From your standpoint, sir, from your view?

15 MS. FLETCHER: Objection, your Honor. I think we are  
16 going to need a sidebar on this.

17 THE COURT: Move on and we'll come back to it.

18 MR. PAUL: Okay, Judge.

19 BY MR. PAUL:

20 Q. What is your understanding, sir, of how many years you are  
21 potentially facing for the crimes you pled guilty to?

22 A. 80 years.

23 Q. As you sit here today, is it your expectation that you're  
24 going to be sentenced to 80 years?

25 A. I would certainly hope not.

IB5JKET3

Finocchiaro - direct

1 Q. Is it your understanding that if and when the government  
2 files this 5K1 letter, that the judge could sentence you to  
3 whatever he thinks is appropriate. Is that right?

4 MS. FLETCHER: Objection to form.

5 THE COURT: I'll allow it.

6 A. That is correct.

7 Q. In your mind, is it possible the Judge who sentences you  
8 could sentence you to as little as no jail at all?

9 A. If that's the Judge's decision, then yes.

10 Q. So he's not restricted in any way, but once he receives the  
11 5K1 letter, is it your understanding that in return for that  
12 letter, he can sentence you to as little as probation?

13 A. To my knowledge, yes.

14 Q. In addition to your admitting to fraudulent telemarketing  
15 activities and money laundering from 2012 to 2017, you told us  
16 that you also pled guilty to a conspiracy to distribute  
17 oxycodone. Is that right?

18 A. That's correct.

19 Q. And you know the period of time that you were selling  
20 oxycodone?

21 A. It was -- I can't put an exact year, but it was five to  
22 seven years possibly. I don't know exactly.

23 Q. Would it be fair to say, sir, that according to your plea  
24 and the charges, you were selling oxycodone from 2008 through  
25 March of 2017?

IB5JKET3

Finocchiaro - direct

1 MS. FLETCHER: Objection to form.

2 THE COURT: I'll allow it.

3 MS. FLETCHER: Your Honor, the witness said he doesn't  
4 recall.

5 THE COURT: Sidebar quickly.

6 (Continued on next page)

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25



IB5JKET3

Finocchiaro - direct

1 (At sidebar)

2 THE COURT: Is the government going to fight on having  
3 this witness say the bad stuff he has done and pled to?

4 MS. FLETCHER: Not at all. My concern is Mr. Paul is  
5 throwing dates at him. The way Mr. Paul was throwing dates at  
6 him was basically impeaching him when he says --

7 MR. PAUL: Fine.

8 THE COURT: That will be a lot easier.

9 MR. PAUL: I will do that.

10 THE COURT: What about this issue of what was the  
11 purpose of meeting with the government, to prepare?

12 MS. FLETCHER: The reason I objected, your Honor, is  
13 because I don't think the jury should know that the government  
14 was preparing him to testify, and then decided not to call him  
15 because it suggests that the government was --

16 THE COURT: I see. So you think his answer may be  
17 they were preparing me for my testimony when they were going to  
18 call me on their case, is that the idea?

19 MS. FLETCHER: Yes.

20 MR. PAUL: You can give them a charge on that.

21 THE COURT: This is a little more subtle. It is Ms.  
22 Fletcher saying that if he suggests, and the jury picks up the  
23 fact that he was being prepared for his testimony on the  
24 government's direct case, and then the jury --

25 MS. FLETCHER: The jurors are listening to you.

IB5JKET3

Finocchiaro - direct

1 THE COURT: It is almost impossible.

2 MS. FLETCHER: I can see them staring at you.

3 THE COURT: That they will then realize that he is  
4 testifying on the defense case and make some improper  
5 inferences from that.

6 MR. SCHMIDT: I have a question. I don't disagree  
7 with what your Honor just said. What I am interested in  
8 knowing is that once the defense decided to call him as a  
9 witness, their witness, and the government was not, whether he  
10 actually spoke to the government in preparation of his  
11 cross-examination by them?

12 MS. FLETCHER: I am happy to address that.

13 THE COURT: I assume not.

14 MS. FLETCHER: We did not.

15 MR. PAUL: I assume not, either, but I should be  
16 permitted to ask this witness that as part of his cooperation  
17 agreement which he has testified to, he is to be made available  
18 to the government for the purposes of testimony.

19 THE COURT: That is fine.

20 MR. PAUL: And that, in fact, during many of these  
21 meetings, certainly a week ago that he was being prepared to  
22 testify. I don't see what is wrong with that.

23 MS. FLETCHER: That is completely improper.

24 What they're trying to do is give the jury the  
25 impression that we prepared him to testify and then tried to

IB5JKET3

Finocchiaro - direct

1 hide his testimony or decided he was in some way being  
2 untruthful or unhelpful.

3 THE COURT: I understand. You can ask the standard  
4 questions. He said how many times he has met with the  
5 government. You can ask him --

6 MR. PAUL: How long those sessions were, I assume, is  
7 permissible?

8 THE COURT: Yes. You can ask him did the  
9 government -- I see the issue.

10 MS. FLETCHER: Yes.

11 THE COURT: You can't ask the standard did the  
12 government go over the questions they were going to ask.

13 MR. PAUL: I won't ask him that. I will ask him how  
14 many times he met. He testified he met them as recently as a  
15 week ago. I will ask him how long did those sessions take when  
16 he met with them and was that the last time he spoke to the  
17 government.

18 THE COURT: That is fine.

19 MS. FLETCHER: To be clear, so the record is clear, I  
20 did not prepare him for his cross-examination.

21 MR. PAUL: I didn't think you had.

22 MS. FLETCHER: I didn't prepare him for his  
23 questioning of you, but I have spoken to him and told him that  
24 you're going to call him and he should answer your questions  
25 just as he would my own.

IB5JKET3

Finocchiaro - direct

1 MR. PAUL: Okay.

2 MS. FLETCHER: So I don't know that that is proper to  
3 elicit that. The purpose of that was so he would calm down and  
4 not to prepare him. I still think this line of questioning is  
5 veering towards suggesting the government has hidden him in  
6 some way.

7 THE COURT: No.

8 MR. PAUL: I intend to ask him just what I indicated  
9 to the court.

10 THE COURT: Say it.

11 MR. PAUL: I will limit my questioning with regard to  
12 that.

13 THE COURT: How many times and how long?

14 MR. PAUL: Yes.

15 THE COURT: Fine. Let's do it.

16 MS. FLETCHER: Your Honor, not to manage the court's  
17 schedule, but it is almost noon. I think the jury is standing  
18 up and --

19 THE COURT: Once again, I have been so fascinated by  
20 what is going on.

21 (Continued on next page)

IB5JKET3

Finocchiaro - direct

1 (In open court)

2 THE COURT: Ladies and gentlemen, it has been pointed  
3 out to me it is noon and I haven't given you a morning break.  
4 I apologize. Please do so. No? People are saying no? I  
5 think it makes sense.

6 (Jury excused)

7 (At sidebar)

8 THE COURT: No break for the weary. How long low  
9 longer do you have, do you think?

10 MR. PAUL: I don't have my notes with me. I think I  
11 have done about half an hour, so I think I have another half an  
12 hour to go hopefully.

13 THE COURT: Let's try to, if we can, finish up by  
14 lunch with cross, too, we are fine. Do you have anything?

15 MR. SCHMIDT: Yes.

16 THE COURT: How long?

17 MR. SCHMIDT: 20 minutes to half an hour.

18 THE COURT: Really?

19 MS. FLETCHER: What is the order?

20 MR. SCHMIDT: This is a good question.

21 MS. FLETCHER: Thank you.

22 MR. SCHMIDT: Because we discussed this actually. I  
23 have 20 minutes to half an hour.

24 THE COURT: I am very surprised.

25 MR. SCHMIDT: Based on some of the questions of Mr.

IB5JKET3

Finocchiaro - direct

1 Paul. Obviously, if I go next, I will not have be able to deal  
2 with the questions elicited by the government, and I am  
3 assuming they're going to try to elicit things I would probably  
4 have to respond to. If the government goes next on  
5 cross-examination, and then my cross-examination could  
6 include --

7 THE COURT: I understand. Ms. Fletcher?

8 MS. FLETCHER: I currently don't anticipate asking him  
9 very much. So I am not sure I will trigger any additional  
10 questions.

11 THE COURT: I think it is a straightforward 611, so it  
12 is fine you do it after Ms. Fletcher.

13 MR. SCHMIDT: Thank your Honor.

14 (Recess)

15 (Continued on next page)

16  
17  
18  
19  
20  
21  
22  
23  
24  
25

IB58KET4

Finocchiaro - Direct

1 (Jury present)

2 THE COURT: Please be seated in the courtroom.

3 We will break for lunch at 1:00 today, ladies and  
4 gentlemen.

5 You may continue with your direct examination of Mr.  
6 Finocchiaro, Mr. Paul.

7 MR. PAUL: Thank you, your Honor.

8 BY MR. PAUL:

9 Q. Sir, before we broke for our last respite, I asked you  
10 questions about the time periods for which you pleaded guilty  
11 concerning the oxycodone. Do you remember that?

12 A. That's correct, yes.

13 Q. And you said you didn't recall the actual time period, is  
14 that right?

15 A. I am not 100 percent certain.

16 Q. You entered into a cooperation agreement with the  
17 government, correct? You told us that.

18 THE COURT: Next question.

19 Q. I am going to show you Government Exhibit 817.

20 Would you look through that document?

21 You have seen this document before, is that fair?

22 A. Yes, I have.

23 Q. That's your cooperation agreement, isn't it?

24 A. That's correct.

25 Q. If you would look down at the bottom of the first page and

IB58KET4

Finocchiaro - Direct

1 read that to yourself.

2 THE COURT: Read it to yourself, sir.

3 A. The last paragraph?

4 Q. Yes. At the very bottom of page 1, beginning with Count  
5 Four.

6 Does that refresh your recollection of the time period  
7 that you admitted to engaging in a conspiracy to distribute  
8 oxycodone?

9 A. I'm sorry. I don't see count -- you said Count Four on the  
10 bottom of the first page?

11 MR. PAUL: Excuse me, Judge.

12 Q. May I have that document back.

13 Let me show you 818. Look at the very bottom of that  
14 page, the first page.

15 A. Yes, I recall.

16 Q. Does that refresh your recollection, sir, that you pleaded  
17 guilty in Count Four to engaging in a conspiracy to distribute  
18 oxycodone from 2008 through in or about March of 2017?

19 A. Yes, sir.

20 Q. With regard to this agreement, what is your understanding  
21 concerning other crimes that you have admitted to in your past  
22 to the government?

23 A. My understanding is as long as I give a truthful account  
24 and I live up to my part, that I cannot be prosecuted by the  
25 Southern District for the crimes that I admitted. However, I



IB58KET4

Finocchiaro - Direct

1 am open to other agencies.

2 Q. Does that include the crimes you have admitted to, which is  
3 the telemarketing activities from 2012 through 2017, correct?

4 A. That is not correct.

5 Q. The fraudulent telemarketing activities for the period in  
6 or about 2012 through in or about March 2017 as charged in  
7 Counts One and Two of the information?

8 MS. FLETCHER: Objection to form.

9 MR. PAUL: I will rephrase it.

10 Q. Would you look at page 3, sir?

11 Look at the second paragraph beginning with "it is."

12 A. OK.

13 Q. You see that?

14 A. Yes.

15 Q. Is it fair to say, sir, as part of your agreement, the  
16 government has agreed not to prosecute you further for the  
17 fraudulent telemarketing activities from 2012 through March of  
18 2017, is that correct?

19 The middle of that paragraph beginning with "A."

20 A. I don't understand the question.

21 Q. You entered into a cooperation agreement with the  
22 government, right?

23 A. Yes.

24 Q. You told us that your past criminal activity, as part of  
25 your agreement with the government, they have agreed not to

IB58KET4

Finocchiaro - Direct

1 prosecute for some of those offenses, if not all of them, is  
2 that correct?

3 A. That's correct, for the past crimes.

4 Q. And included in those past crimes is what you have told us  
5 about that you have admitted to, correct?

6 A. That's correct.

7 Q. And also included in your past crimes is your personal use  
8 of steroids and cocaine, is that so?

9 A. That's correct.

10 Q. As well as your personal use of oxycodone and other  
11 prescription opiates from '08 to 2017 is that true?

12 A. That's correct.

13 Q. As well as solicitation of prostitution approximately five  
14 times per year from 2000 through June 2017, is that true?

15 A. That sounds accurate.

16 Q. Driving while intoxicated on several occasions from '08  
17 through March 2017, is that true?

18 A. That's correct.

19 Q. And the operation of a sports gambling book from  
20 approximately 2008 to 2016, is that correct?

21 A. That's correct.

22 Q. The sale of marijuana between '03 and '05 and in late 2016  
23 through early 2017, is that fair?

24 A. That's accurate.

25 Q. When you were selling oxycodone, where were you selling it?

IB58KET4

Finocchiaro - Direct

1 A. It was just to my group of friends; we all had problems and  
2 it would kind of go back and forth.

3 Q. Were you selling it at Olive Branch?

4 A. Yes, at times.

5 Q. You told us before we took our break that you met with the  
6 government as recently as approximately a week ago, is that  
7 right?

8 A. Yes, sir.

9 Q. You told us before your cooperation agreement you had met  
10 with them approximately four or five times, is that right?

11 A. Give or take, yes.

12 Q. After your cooperation agreement, you met with them again  
13 on several occasions, is that fair?

14 A. About six, seven times, give or take.

15 Q. Six or seven times in addition to the four or five times  
16 before you signed the cooperation agreement, is that right?

17 A. That's correct.

18 Q. When you met with them, let's take the last time you met  
19 with them which was a week ago, how long was that meeting,  
20 approximately?

21 A. I don't have my phone or anything -- two hours, give or  
22 take. I don't recall the exact time frame.

23 Q. Have you met again with the government since then?

24 A. Since last week?

25 Q. Yes.

IB58KET4

Finocchiaro - Direct

1 A. No, I have not.

2 Q. In the one or two hours, I think you said two hours or so  
3 that you met with them a week ago, was that similar in time  
4 frame as to all the other meetings you met with them prior to  
5 that date?

6 THE COURT: In other words, did each meeting last  
7 approximately two hours, is that what you're asking?

8 MR. PAUL: Yes.

9 THE COURT: Sir, did each of your meetings with the  
10 government that you testified to last approximately two hours?

11 THE WITNESS: I can't say for sure.

12 Q. Were some longer, some shorter?

13 A. That sounds accurate.

14 Q. Getting back to your working with Olive Branch, did there  
15 come a time when Arash Ketabchi and Bill Sinclair had a  
16 falling-out, and if so, could you tell us what happened after  
17 that?

18 MS. FLETCHER: Objection to the compound questions.

19 THE COURT: Yes. Sustained as to form.

20 Q. Is it your understanding that -- what is understanding as  
21 to what transpired between Arash Ketabchi and Bill Sinclair at  
22 Olive Branch?

23 A. There was a major dispute that ultimately just tore them  
24 apart.

25 Q. Did this dispute involve you or was this between Bill

IB58KET4

Finocchiaro - Direct

1 Sinclair and Arash?

2 A. It was Bill and Arash, that was the real problem there.

3 Q. What, if anything, did Arash Ketabchi do after this dispute  
4 arose?

5 A. It was an ongoing thing. Can you be more specific?

6 Q. Did he leave Olive Branch?

7 A. As a result, ultimately, I want to say it was an agreed  
8 upon suspension or ultimately where he left.

9 Q. Where, if you know, did he go? What did he do?

10 A. He started his own floor from his house.

11 Q. Was that A1?

12 A. Yes, sir.

13 Q. That was from his house?

14 A. Yes.

15 THE COURT: When was this, approximately?

16 MR. PAUL: I didn't hear the question.

17 THE COURT: I am asking the witness, when did Arash  
18 leave and start A1 from his house, approximately?

19 THE WITNESS: I would say late -- it was the last  
20 year, 2015 to '16, roughly.

21 THE COURT: Thank you.

22 Q. Do you know Steven Ketabchi?

23 A. Yes, I do.

24 Q. How do you know him?

25 A. I know him as the brother of Arash.

IB58KET4

Finocchiaro - Direct

1 Q. Had you ever met him?

2 THE COURT: Have you ever met him?

3 Q. Have you ever met him?

4 A. I can't pinpoint the time, but I feel like I have before.  
5 But I just don't recall when because I have known Arash for so  
6 long that I feel like I remember seeing him. I just can't  
7 recall the specific time.

8 Q. You can't recall when or where you met him, but you believe  
9 you have because you have known Arash Ketabchi for so long?

10 A. Family barbecues, I was close with Arash so I have been  
11 around the family, and I am sure I would have ran into him at  
12 some point. I just can't pinpoint an exact time.

13 Q. Did he ever work for you?

14 A. No.

15 Q. Did he ever work on your floor?

16 A. No, sir.

17 Q. Was he ever on the payroll?

18 A. No, sir.

19 Q. As far as you know, was he a salesperson of any kind?

20 A. Not to my knowledge.

21 Q. When Arash Ketabchi left Olive Branch, did he have a  
22 conversation with you regarding his brother, Steven Ketabchi?

23 A. Can you be more specific?

24 Q. Did he discuss with you what role, if any, Steven Ketabchi  
25 was going to play for him when he left Olive Branch?

IB58KET4

Finocchiaro - Direct

1 A. He was -- from what I was told, he was handling all their  
2 chargebacks and I believe saves.

3 Q. You believe he was involved in saves?

4 A. I know his chargebacks.

5 MS. FLETCHER: Objection.

6 Q. So you're able to say that Arash Ketabchi told you that,  
7 upon leaving Olive Branch, that Steven Ketabchi was going to be  
8 handling his chargebacks, is that fair?

9 MS. FLETCHER: Objection to form, your Honor.

10 THE COURT: Sustained.

11 You may answer.

12 A. He wanted me to explain the process of how I did  
13 chargebacks.

14 Q. Your primary role, you told us, was chargebacks, is that  
15 right, as well as saving customers?

16 A. They tend to go hand in hand.

17 Q. And Arash Ketabchi told you that Steven was going to do his  
18 chargebacks and he asked you to do what?

19 A. He just wanted me to explain how to do it so he had the  
20 know-how of how to go through the process.

21 Q. Was it your understanding from that conversation that  
22 Steven Ketabchi did not know how to do the process of dealing  
23 with chargebacks?

24 A. That was my assumption, being that he wanted me to teach  
25 him.

IB58KET4

Finocchiaro - Direct

1 THE COURT: Approximately when was this conversation?

2 THE WITNESS: It would have been between the last year  
3 before we got in trouble. My dates are a little off, but it  
4 was towards the end.

5 Q. Did you, in fact, have any conversation with Steven  
6 concerning chargebacks after that?

7 A. A brief conversation.

8 Q. What, if anything, did you tell Steven concerning  
9 chargebacks?

10 A. Just -- specifically?

11 Q. If you can recall.

12 A. I would have explained that you have to call the client,  
13 try to put the fire out before -- if you could stop it before  
14 it gets started, meaning the chargeback or the retrieval  
15 request.

16 Q. But you don't know if he ever did that, do you?

17 MS. FLETCHER: Objection.

18 Q. Do you know if he ever did that?

19 A. Do I know if he did what?

20 Q. Do you know if Steven Ketabchi ever reached out to any  
21 customers?

22 A. To my knowledge, it's very difficult to fight a chargeback  
23 if you're not calling the client.

24 THE COURT: Do you know if Steven Ketabchi ever  
25 contacted any customers?



IB58KET4

Finocchiaro - Direct

1 THE WITNESS: That I can't say for sure.

2 Q. That is something you would have done, right?

3 A. Absolutely.

4 Q. But you don't know if he did that?

5 MS. FLETCHER: Objection. Asked and answered.

6 THE COURT: Sustained.

7 Q. So what else did you tell Mr. Steven Ketabchi with regard  
8 to how he was supposed to respond to chargebacks?

9 A. Providing him with the appropriate documentation.

10 Q. From where?

11 A. We had that at the time in our office.

12 Q. Meaning the contracts?

13 A. I believe they had contracts, but there was a form called  
14 the COS, continuation of service agreement, that would  
15 ultimately, if there was a deal that was worked out between the  
16 client and the company, sign it, and puts the chargeback to  
17 rest.

18 Q. So you advised him that if there was a COS, include that in  
19 your documentation, is that fair?

20 A. That's fair, yes.

21 Q. But there wasn't always a COS, correct?

22 A. You have to agree with the client. If they are not willing  
23 to talk, then no.

24 Q. But there might be a contract without a COS, right?

25 MS. FLETCHER: Objection to form.

IB58KET4

Finocchiaro - Direct

1 THE COURT: Sustained.

2 Q. Is it your understanding that a customer -- what is your  
3 understanding with regard to a customer when he signs a  
4 contract?

5 MS. FLETCHER: Objection to form.

6 THE COURT: I don't understand.

7 MR. PAUL: I will withdraw it.

8 Q. Is it fair to say, sir, when you had this conversation with  
9 Steven Ketabchi, you explained to him what you had done with  
10 regard to responding to chargebacks?

11 A. That's correct.

12 Q. What, if any, impression did you have about Steven Ketabchi  
13 when you spoke to him?

14 MS. FLETCHER: Objection.

15 THE COURT: Sustained.

16 Q. How many times would you say you spoke to Steven Ketabchi  
17 about his role as dealing with chargebacks?

18 A. Once, maybe twice.

19 Q. Did you delegate any further conversations with him to deal  
20 with Steven concerning chargebacks, did you delegate that job  
21 to anybody else?

22 A. Yes, I did.

23 Q. Who did you delegate that to?

24 A. Jolaina Aziz.

25 Q. Do you know whether Jolaina then spoke to him about how he

IB58KET4

Finocchiaro - Direct

1 is supposed to deal with chargebacks?

2 A. That was her duty. I didn't hear the conversation, but she  
3 would have done what I asked her to, or via e-mail.

4 Q. Did you feel that Steven Ketabchi was left to deal with  
5 this task of chargebacks on his own?

6 THE COURT: Sustained.

7 Q. Did you come to any conclusion as to why Arash Ketabchi  
8 would have asked Steven Ketabchi to handle his chargebacks?

9 MS. FLETCHER: Objection.

10 THE COURT: Sustained.

11 Q. Are you aware of a company called Chargeback 911?

12 A. Yes, I am.

13 Q. What is it?

14 A. Chargeback 911 is a company that -- the service they  
15 provide is instead of having a chargeback hit your merchant  
16 account, you get like a 24- to 48-hour window to correct the  
17 problem with the client before it hits on the merchant account.

18 Q. So this is a company that holds itself out as to dealing  
19 with customers who are filing chargebacks?

20 MS. FLETCHER: Objection.

21 THE COURT: Sustained as to form.

22 Q. Was this a company that you utilized at Olive Branch, and  
23 if so, how?

24 A. We did use the company at one point, and it was used to  
25 help prevent chargebacks.

IB58KET4

Finocchiaro - Cross

1 Q. Are you aware that Chargeback 911 advertises their  
2 services?

3 MS. FLETCHER: Objection, your Honor.

4 THE COURT: Does Chargeback 911 advertise its  
5 services?

6 THE WITNESS: It was more of a referral. I can't  
7 recall. I don't know.

8 Q. So you went to it through a referral?

9 A. Someone mentioned it to us.

10 Q. I see.

11 Is it fair to say, sir, that during the time both at  
12 Tax Club and at Olive Branch you were knowingly and  
13 intentionally committing crimes?

14 A. That's a fair statement.

15 MR. PAUL: I have nothing further of this witness,  
16 Judge.

17 THE COURT: Thank you.

18 Is there any cross-examination of this defense  
19 witness?

20 Government.

21 MS. FLETCHER: Yes, your Honor, very briefly.

22 CROSS-EXAMINATION

23 BY MS. FLETCHER:

24 Q. Good afternoon, Mr. Finocchiaro.

25 A. Good afternoon.

IB58KET4

Finocchiaro - Cross

1 Q. You testified on direct examination about how you and Mr.  
2 Sinclair started a coaching floor. Do you remember that?

3 A. Yes.

4 Q. Can you just describe briefly what the coaching pitch is  
5 like?

6 A. The coaching pitch is, it's based off of a client signing  
7 up to -- could have been a variety of different things. Let's  
8 just say they saw an infomercial on how to make money from home  
9 on a computer. The coaching pitch would explain, hey, welcome,  
10 this is so and so calling from ABC Coaching Company, and it  
11 looks like you signed up for, whatever they signed up for, and  
12 congratulations. So tell me a little bit about, what are your  
13 financial goals, and start talking about what it is they want  
14 to do. And then you go through, it's called a probe to find  
15 out how much money they are working with. Because if there is  
16 no money, you don't want to waste your time, you want to move  
17 on to the next call, because there is a lot of volume in these  
18 calls, you went through a lot of leads.

19 So it's a long pitch, but ultimately if they have  
20 money you go to the next step and you just explain: If you're  
21 doing this business, you are going to need to have a Web site.  
22 You are going to want to have an LLC set up. You are going to  
23 explain certain things and point them in the direction of what  
24 they need to do to be successful. That's ultimately what the  
25 coaching pitch is. That's how it's set up.

IB58KET4

Finocchiaro - Cross

1 Q. Is it fair to say, Mr. Finocchiaro, that the coaching pitch  
2 is designed to prime the customer for the ultimate biz-op sale?

3 A. Absolutely.

4 Q. And the idea being that the coach tells the customer, in  
5 order for your business to be successful and profitable, you  
6 are going to need X, Y, Z products, is that fair?

7 A. That is fair.

8 Q. So when the customer gets a phone call from the biz-op  
9 floor saying, I am calling on behalf of the coaching company  
10 about X product, the customer knows what the biz-op pitch is  
11 talking about?

12 A. That's how it's supposed to go, yes.

13 Q. You talked a bit about how your job was handling saves and  
14 chargebacks, and you mentioned that employees were supposed to  
15 save their customers. Can you explain what you meant by that?

16 A. As I stated earlier, I kind of morphed into the saves role,  
17 because originally I was doing chargebacks but there is so many  
18 cancellations that led to a lot of my reps would -- they feel  
19 overwhelmed, because they don't want to worry about last week,  
20 you want to move on and make your money for this week. So in  
21 circumstances they would pawn it off on me, but at first they  
22 were supposed to save their own clients, until it became a  
23 little bit too much for them to handle.

24 Q. Were there times when you were overwhelmed with the number  
25 of saves that you were required to handle?

IB58KET4

Finocchiaro - Cross

1 A. Yes.

2 Q. Who, if anyone, did you enlist to assist you in handling  
3 those saves?

4 A. I had some of workers that worked for me. Are you asking  
5 specifically?

6 Q. Who specifically?

7 A. I remember Andrew Owimrin helping me. I also remember  
8 Chris Wilson.

9 Q. Why did you enlist Andrew Owimrin to help you with saves?

10 A. Because I knew -- he was helpful, he was always someone who  
11 was -- he was a company guy, where he wanted to help out, and  
12 he was good at what he did and he would help keep the client on  
13 board.

14 Q. Fair to say he was good at it?

15 A. He was very good at it.

16 Q. You mentioned on your direct testimony certain reasons that  
17 customers gave you for wanting to cancel. I think you said  
18 they don't remember doing the transaction. Was that one of  
19 them?

20 A. That's correct.

21 Q. You also mentioned they didn't have the money. That was a  
22 reason why they might want to cancel, is that correct?

23 A. That is correct.

24 Q. Did the customers also say things like that, I want to make  
25 money before I invest any more money?

IB58KET4

Finocchiaro - Cross

1 A. That would come out.

2 Q. Did you in your practice talking to these customers have a  
3 standard response for that sort of pushback from the customer?

4 A. Yeah. You just say whatever you -- are you saying  
5 specifically?

6 Q. If a customer said to you, I don't want to invest any more  
7 money until I make back the money I made from the coaching  
8 sale, what did you say in response?

9 MR. SCHMIDT: Objection. Relevance.

10 THE COURT: Pardon me?

11 MR. SCHMIDT: Relevance.

12 THE COURT: Just a moment.

13 I will allow it.

14 You may answer, sir.

15 A. I'm sorry. Can you please say that again?

16 THE COURT: When a customer said to you they didn't  
17 want to invest any more money until they made some money, what  
18 did you do.

19 A. In a situation like that, you would tell them, listen, sir,  
20 ma'am, you spent X amount of money, OK. How are you going to  
21 expect to, you know, try and make money when you don't have  
22 certain things in place? How are you going to try to make  
23 money when you don't even have a business, meaning the LLC that  
24 would have in essence been set up. You would go over specifics  
25 and tell them -- it's like having a storefront with no



IB58KET4

Finocchiaro - Cross

1 advertising on the front. It's just a building that has  
2 nothing on there so no one is going to walk into your store.  
3 How are you going to make money with an online business if you  
4 don't have a Web site? So those are some examples.

5 Q. You testified on direct that salespeople were not permitted  
6 to make blatant earnings claims. Do you remember that?

7 A. That is correct.

8 Q. It's fair to say salespeople were not permitted to say, you  
9 will make \$5,000 by the end of the month, is that correct?

10 A. They couldn't say that.

11 Q. But they were permitted to say things like, how are you  
12 going to make money if you don't invest more money? Is that  
13 right?

14 A. There was always a spin on the wording of it where you are  
15 going to look to make money. You ask them their financial  
16 goals. If someone says, sir, ma'am, why are you doing this?  
17 How much are you looking to make? Please don't give me a crazy  
18 number like 20,000 a month, ha, ha, ha. You create the  
19 conversation. Then ultimately they will say, two, three, four  
20 thousand dollars. Then you use that number that they said, you  
21 plug it in.

22 Q. What is the purpose of doing that?

23 A. To try and keep ourself where we are not having clients  
24 complain that these guys are making straight earnings claims.  
25 And we also had recordings to try and keep these things.

IB58KET4

Finocchiaro - Cross

1 Q. Mr. Finocchiaro, wasn't the purpose of that statement that  
2 you just made for the customer to understand that they would  
3 make two or three or four thousand dollars if they just  
4 invested a little more money?

5 MR. SCHMIDT: Objection.

6 THE COURT: I will allow it.

7 A. Absolutely.

8 Q. Now, you talked a bit with Mr. Paul about the grant  
9 program. I want to just clarify a couple of points about the  
10 grant program.

11 You described how there was a period of time where  
12 Carl Morris and Richard Frost came to your floor to start the  
13 grant program. Do you remember that?

14 A. Yes, I do.

15 Q. Is it fair to say that during that time, what you and the  
16 other salespeople at Olive Branch were doing was actually  
17 selling grants themselves?

18 A. For that time period.

19 Q. Is that accurate?

20 A. When they were there, yes; after they were there, not  
21 before.

22 Q. By that, you were actually calling the customers and  
23 pitching them on the initial grant itself, is that correct?

24 A. Yes, that is correct.

25 Q. Now, if you can, what, if any, difference is there between

IB58KET4

Finocchiaro - Cross

1 that model and the practice on your floor of selling to grant  
2 leads?

3 A. The consensus is everyone understood that grant lead, it's  
4 complete, it's nothing, it's a complete sham, where there is  
5 literally nothing behind it, and everyone had a full  
6 understanding of what it was that we were doing at that point.  
7 And it was a decision that, are we going down this road,  
8 everyone? And it was kind of a group discussion about it.

9 Q. Mr. Finocchiaro, I am not sure that you have clarified the  
10 point. What I am trying to ascertain is the difference between  
11 selling grants and selling a biz-op product to a grant lead.

12 Starting with the first, selling grants, there was a  
13 period of time that you did that on your floor, correct?

14 A. That's correct.

15 Q. And that was a short period of time when Carl Morris came  
16 and worked for you, is that right?

17 A. That is correct.

18 Q. Separate and apart from that, there was a longer period of  
19 time where your floor sold biz-op products to people who had  
20 previously purchased grants, is that correct?

21 A. For a grant lead.

22 Q. Yes.

23 A. Yes. I misspoke. I didn't realize that's what you were  
24 asking.

25 Q. This is why I am clarifying.

IB58KET4

Finocchiaro - Cross

1           So focusing on your sales floor's efforts to pitch  
2       biz-op products to people who had previously purchased grants,  
3       what, if anything, did you instruct your salespeople to say to  
4       prospective customers about the grant that they had previously  
5       applied for?

6       A.   It was a feel-out process.   They would tell them sometimes,  
7       this is bogus, chances are you are never going to get what you  
8       paid for.   In other circumstances, if you didn't want to scare  
9       away the client by saying it was a straight-up sham, you would  
10      just say, from my experience, I know it takes a long time if  
11      you're ever going to get the money from whatever grant you  
12      supposedly signed up with.

13           Then, based upon that, then say, we have a program  
14      that we can put in place to expedite that process, to at least  
15      put you in a position to try and hit whatever financial goals  
16      for the time being until that grant, if it ever comes.

17      Q.   That would be through selling them biz-op products for some  
18      other online business?

19      A.   That is correct.

20           THE COURT:   Ms. Fletcher, is this a logical time to  
21      break for lunch?

22           MS. FLETCHER:   Yes.

23           THE COURT:   10 after 2, ladies and gentlemen.  
24      Remember to keep an open mind.   Be back by 10 after 2.

25           (Jury exits courtroom)

IB58KET4

Finocchiaro - Cross

1 THE COURT: You may step down, sir.

2 10 after 2.

3 (Luncheon recess)

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

IB5JKET5

Finocchiaro - cross

1 AFTERNOON SESSION

2 2:10 pm

3 (Trial resumes)

4 (In open court; jury not present)

5 THE COURT: Bring the jury in. How much longer do you  
6 have?

7 MS. FLETCHER: I'm finished, your Honor.

8 THE COURT: Pardon me?

9 MS. FLETCHER: I'm finished.

10 THE COURT: All right.

11 (Jury present)

12 THE COURT: Please be seated in the courtroom.

13 Ms. Fletcher, you may continue with your  
14 cross-examination of this witness.

15 MS. FLETCHER: No further questions, your Honor.

16 THE COURT: Thank you. Mr. Schmidt, do you have  
17 questions for this witness?

18 MR. SCHMIDT: Yes, I do, your Honor. Thank you.

19 THE COURT: Approximately how long, sir?

20 MR. SCHMIDT: I am not good at this.

21 THE COURT: I know!

22 MR. SCHMIDT: An hour.

23 THE COURT: Proceed.

24 CROSS EXAMINATION

25 BY MR. SCHMIDT:

IB5JKET5

Finocchiaro - cross

1 Q. Mr. Finocchiaro, am I pronouncing your name correctly?

2 A. Yes, sir.

3 Q. Mr. Finocchiaro, you testified earlier that you thought the  
4 Judge would make a determination if you told the truth. Do you  
5 remember that?

6 A. I am sorry. Can you say that again?

7 Q. Do you remember testifying that you thought the Judge made  
8 the determination whether you were telling the truth?

9 A. I don't recall that. I don't recall that specifically.

10 Q. Now, if everything goes well, you will receive some type of  
11 letter. Is that right?

12 A. If I was truthful.

13 Q. You would get some kind of letter. Is that right?

14 A. That is correct.

15 Q. What is that letter called? Do you know what that letter  
16 is called?

17 THE COURT: Asked and answered. Move on.

18 Q. Now, isn't it a fact that it is the government and only the  
19 government that makes the determination whether you fulfilled  
20 your obligations under the agreement. Is that right?

21 A. To my knowledge, yes.

22 Q. Now, you told us that salespeople were not to make  
23 statements about earnings, earning claims. Is that right?

24 A. That's correct.

25 Q. Now, there was, though, an exception to one of the products

IB5JKET5

Finocchiaro - cross

1 that you were selling. Is that right?

2 A. That is correct.

3 Q. What was that product?

4 A. Youngevity.

5 Q. Do you know if the salespeople were instructed as to what  
6 they could say when they were selling the Youngevity product?

7 A. Every time there is a new product that we role out, we  
8 indicate different rules and what you can and can't say or  
9 parts to focus in on.

10 Q. Now, from April 2014 to October 2015, what were the new  
11 products that were rolled out other than Youngevity?

12 A. I don't recall any new products as opposed to just the  
13 Youngevity. Can you be more specific?

14 Q. You said whenever there were new products rolled out, that  
15 you would meet with the salespeople and have a conversation,  
16 and basically you're talking about now that during the period  
17 of time that Andrew Owimrin is working at Olive Branch, there  
18 was one new product that you remember?

19 A. It is hard to say. I don't recall offhand. We always had  
20 different -- we would switch gears every now and again  
21 depending on -- I can't recall exactly -- there are certain  
22 parts I can't put an exact date on it.

23 Q. Now, let's talk -- I understand it is difficult.

24 Do you recall what products that you were selling from  
25 the time Andrew Owimrin appeared till the time he left?



IB5JKET5

Finocchiaro - cross

1 A. We did biz-op services. Do you want me to specifically  
2 name them?

3 Q. Yes.

4 A. LLC setups, business plan, for a short time Corporate  
5 Credit, SCO, SCM, there would be customer service, Youngevity  
6 which was basically the same thing as biz-op, except it was a  
7 service where you can actually make an earnings claim with  
8 money attached to it and a time-frame, and then there was debt  
9 for a little while and then there was grant programs as well.

10 Q. The debt came later, after Mr. Owimrin left, is that right,  
11 or you don't remember the timing of it?

12 A. I know it was later on. I don't recall whether he was  
13 there for that or not.

14 Q. What is customer service?

15 A. Customer service is if you have an idea that a client is  
16 going to need a lot of handholding, meaning instruction, we  
17 rolled this out when our fulfillment realized it is taking a  
18 lot of time, so it was just extra handholding to explain what  
19 they needed for the client.

20 Q. Something like extra training sessions?

21 A. That sounds right, I guess.

22 Q. Many of the products that you did sell came with training  
23 sessions. Is that right?

24 A. Not all products specifically were trained. LLC is pretty  
25 straightforward. Not all of them. Some, some they're

IB5JKET5

Finocchiaro - cross

1 explained. There is a welcome call.

2 Q. Obviously in a search engine optimization thee is going to  
3 be somebody who knows what to do with computers, who is going  
4 to handle that and not training the customer, right?

5 A. That is accurate.

6 Q. And most of the marketing kinds of things would be things  
7 that fulfillment would do and not the customers, right?

8 A. Most of it.

9 Q. There are things that did come with training like the  
10 business plan, the Corporate Credit and bookkeeping and even to  
11 some extent a little bit of tax stuff, right?

12 A. That's correct.

13 Q. Now, with the Youngevity, the salespeople were told they --  
14 when were the salespeople told that they can make, I guess it  
15 could be considered a modified earnings claim?

16 MS. FLETCHER: Objection to form.

17 THE COURT: Sustained.

18 BY MR. SCHMIDT:

19 Q. What were the salesmen told that they can make --

20 THE COURT: What type of earnings claims were the  
21 salesmen permitted to make in regard to the Youngevity?

22 THE WITNESS: It wasn't supposed to be a specific  
23 dollar amount, but the idea was while everything is getting set  
24 up within the first two to three months, you can expect to get  
25 some checks coming in.

IB5JKET5

Finocchiaro - cross

1 BY MR. SCHMIDT:

2 Q. Then subsequent to that, was there a frequency of when to  
3 expect the next check?

4 A. After the 60 to 90 days, you mean?

5 Q. Yes.

6 A. That was not so much after, assuming they did their part,  
7 it was up to them, that was the training wheels for showing  
8 them for 60 to 90 days.

9 Q. Weren't they told that the Youngevity program then would  
10 provide checks every two weeks?

11 A. That was the idea. Not every two weeks, but normally we  
12 would go monthly.

13 Q. You say bill monthly?

14 A. No. Generally, if anything, you would expect to get one  
15 check a month.

16 Q. So that is your understanding, as you sit here now, it was  
17 once a month?

18 A. That's how I remembered it.

19 Q. Now, would it be fair to say that you actually heard one of  
20 the salesmen making a specific earning claim, amounts of money  
21 to a customer? Do you remember that?

22 A. Yeah, there has been instances where we would hear things  
23 like that.

24 Q. And the people you remember was Chris Wilson?

25 A. That sounds accurate.

IB5JKET5

Finocchiaro - cross

1 Q. Chris Wilson was generally a person that your office had  
2 problems with with him making promises including earning  
3 promises, right?

4 A. Absolutely.

5 Q. Now, do you know how you would rank the salespeople during  
6 the 2014-15 in relation of the amount of sales that they made?

7 A. It is not that cut and dried because it is what stays on  
8 board, so it is tough to say without seeing something in front  
9 of me at this point, but everyone was for the most part pretty  
10 decent.

11 Q. Do you think you maybe could put them in tiers, like who  
12 was the most productive salesmen and who was the least  
13 productive salesman?

14 MS. FLETCHER: Objection; asked and answered.

15 THE COURT: I'll allow it.

16 A. My memory, I'm not remembering specifically what workers  
17 were in at the time frame we set.

18 2014 to 15?

19 Q. Yes, when Andrew Owimrin was working there?

20 A. I understand that, but I don't know if there is some other  
21 people that might have been with us at that time. I am not  
22 sure now if they were there during that time.

23 Q. Just the people that you remember.

24 A. Okay. Arash was one of the managers, he would pitch with  
25 Chris Wilson for a while, so they were kind of -- you can claim

IB5JKET5

Finocchiaro - cross

1 it was one person in essence. Pete DiQuarto, Andrew, Reagan.

2 Q. You're saying Andrew and Reagan were in the top tier of  
3 salespeople. Is that your testimony?

4 A. No, I am not saying that.

5 Q. Let's talk about the people who were the most productive,  
6 the top tier.

7 A. There is different times where other people were better  
8 than others because depending on who was there, so that is why  
9 it is hard to answer that specifically.

10 Q. The next question, now you have testified to saves and  
11 charge-backs, correct?

12 A. Correct.

13 Q. Now, would it be fair to say that saves are what occurs  
14 before a charge-back is made?

15 A. Yes, that's correct.

16 Q. Is there a time-frame generally when people would call up  
17 prior to a charge-back, where you or anyone else would speak to  
18 them about a save?

19 A. We had a recision period.

20 Q. The recision period was three days for people basically  
21 under 65 and 14 days for people over 65. Is that right?

22 A. That's accurate, right.

23 Q. So we're talking about the save period being within that  
24 recision period. Is that right?

25 A. Yes, sir.

IB5JKET5

Finocchiaro - cross

1 Q. So the times that you asked Andrew to help you with the  
2 saves, we're talking about the people who contacted Olive  
3 Branch and indicated in some way that they may want to back  
4 out. Is that right?

5 A. Yes, sir.

6 Q. So subsequent to the 14-day period for over 65 and  
7 three-day period for the under 65 customers, you basically took  
8 over and were trying to prevent the charge-backs or get --  
9 there is an initial for the stopping the charge-backs. What is  
10 that called, the document?

11 A. COS.

12 Q. COS? And you were in charge of that, right?

13 A. That's correct.

14 Q. Now, the way the office was set up, there was a main  
15 telephone number for Olive Branch for people to reach out. Is  
16 that right?

17 A. A customer service line.

18 Q. Was there a separate line for each of the entities?

19 Was there a separate telephone number that would say  
20 Olive Branch or Champion or Paramount?

21 A. I believe so. I cannot say for certain. I don't believe  
22 that.

23 Q. Now, if the office was open and if it went to the main  
24 line, it would be answered by the women who were working as  
25 compliance or account-makers, right?

IB5JKET5

Finocchiaro - cross

1 A. That's accurate.

2 Q. If a complaint -- if somebody came on while you were there,  
3 you would be the first person generally to be contacted by your  
4 employee about the problem, is that right, unless the people  
5 asked for a specific person?

6 A. It would get forwarded to me, yeah, depending on the  
7 situation.

8 Q. Now, you often came in late to the office, didn't you?

9 A. That's correct.

10 Q. That was often a result of your drug use. Is that correct?

11 A. That was part of it, but that was an agreement I had with  
12 my partner.

13 THE COURT: That was the agreement you had with your  
14 partner?

15 THE WITNESS: That he would be the early guy and I was  
16 the late guy because we would stay late hours at the office.

17 THE COURT: All right.

18 BY MR. SCHMIDT:

19 Q. Now, if there was nobody to answer the phone, the calls  
20 from the customers would go into voice-mail. Is that right?

21 A. That's correct.

22 Q. Now, there was a setup with voice-mail that you would  
23 actually get the printout, you would have to get an email with  
24 what was left on the voice-mail. Is that right?

25 A. The service had something along those lines, with like a

IB5JKET5

Finocchiaro - cross

1 transcript that you can read.

2 Q. When you were in the office and somebody called, it would  
3 be you that would first be dealing with the customer that had a  
4 problem. Is that right?

5 A. I would be notified hey, call this person or when I was  
6 able to get to it, I got to it.

7 Q. When the office was closed, you would be the person who  
8 would actually get an email for every voice-mail that came into  
9 the office. Is that right?

10 A. I can't say every one, but the idea was to get as many as  
11 possible.

12 Q. Was there anybody else set up the same way that got the  
13 voice-mails?

14 A. I don't think every, I don't think every sales rep had that  
15 feature. They had their own voice-mails, but I believe like  
16 our compliance department would have had access to that as  
17 would myself, as would Bill Sinclair and myself.

18 Q. Now, you would also, in the process that the  
19 appointment-setters compliance were women, they took a message  
20 from somebody who needs to be spoken to and you were not  
21 around, they would put -- withdrawn.

22 There were times where the appointment-setters put  
23 information in the Olive Branch calendar that was directed to  
24 you. Is that right?

25 A. Not necessarily me.



IB5JKET5

Finocchiaro - cross

1 Q. Were there times where they would put in messages basically  
2 saying cancellation for female, please call as soon as  
3 possible, or cancellation call for Fino, or cancellation call  
4 for Fino? Didn't you get a lot of those emails?

5 A. Yes, I did.

6 Q. Because, as you said, you were the person in charge of  
7 charge-backs and complaints. Is that right?

8 A. That's correct.

9 Q. Would it be fair to say -- withdrawn.

10 Now, in the complaints or the cancellation information  
11 ranged -- there was a great range of reasons why people were  
12 calling up to cancel. Is that right?

13 A. Yes, sir.

14 Q. There were reasons where people just simply decided that  
15 they didn't want to go through with it?

16 A. That's accurate.

17 Q. People who said that they misunderstood what was supposed  
18 to happen?

19 A. That's accurate.

20 Q. People who said they were promised something that they  
21 didn't get?

22 A. That's accurate.

23 Q. People who were waiting on what they were supposed to get  
24 and it hadn't been fulfilled?

25 A. Sometimes.

IB5JKET5

Finocchiaro - cross

1 Q. Well, you did have fulfillment problems that led to many,  
2 many complaints. Is that right?

3 A. Sometimes.

4 Q. Let's talk about Youngevity.

5 Did you have fulfillment problems in actually getting  
6 the website up and getting ready to go for many clients?

7 A. Towards the end, yes.

8 Q. You had to change fulfillment people to actually get the  
9 websites going?

10 A. Sorry, who?

11 Q. You had to change the people who were actually making the  
12 websites and putting them up?

13 A. Yes, that's correct.

14 Q. But would it be fair to say that you and Bill were quite  
15 excited about the prospect of making money from this Youngevity  
16 model?

17 A. Yeah, that's accurate.

18 Q. How were you going to make money from the Youngevity model?

19 What were your expectations to make money from the  
20 Youngevity model?

21 A. It was explained to me that by putting specific placements  
22 in a hierarchy of different clients that signed up, if you're  
23 on an upper echelon, you will get bigger checks. The idea is  
24 to keep building underneath, and that is how it was described  
25 to us and it also made sense to do because we were told that

IB5JKET5

Finocchiaro - cross

1 the clients would make some money.

2 Q. What you described, that only makes sense if the people  
3 that you were bringing in -- in other words, the customers --  
4 were actually going to make money selling the product. Is that  
5 right?

6 A. That's accurate, yes.

7 Q. Indeed, to some extent -- withdrawn.

8 It was also clear that part of this program was that  
9 the product was going to be selling on the internet. Is that  
10 right?

11 A. That's correct.

12 Q. The customers generally would not be involved in the actual  
13 internet sales; it would be run by your company or the  
14 fulfillment people who set it up?

15 A. For a period of time.

16 Q. And including it would be, for example, not only setting up  
17 the website, but providing marketing, search engine  
18 optimization, YouTube or other things that either was included  
19 in the package or could be added to the package. Is that  
20 right?

21 A. That's accurate.

22 Q. So if a salesperson told -- withdrawn.

23 So you or Bill, or the combination of you and  
24 Mr. Medeiros, informed the salespeople that this program would  
25 be run by the company or fulfillment people and not run by the

IB5JKET5

Finocchiaro - cross

1 customers. Is that right?

2 A. It was explained exactly how it was explained to us, and we  
3 would get our point across to our workers that --

4 Q. So it was appropriate based on --

5 MS. FLETCHER: Your Honor, I don't believe the witness  
6 finished answering.

7 THE COURT: Did you finish?

8 Q. Is there anything else you wanted to add?

9 A. I was saying we were explained for the first six -- I am  
10 sorry -- two to three months, 60 to 90 days, it was like  
11 training wheels where they would look to get checks, okay, and  
12 then after that it was explained that it was sink or swim, you  
13 needed to learn during that process.

14 Q. What did they have to learn?

15 A. What did they learn?

16 Q. What did they have to learn?

17 A. How to manage the business.

18 Q. Well, if they're making sales on the website, right, who is  
19 the one who is sending out the product for a sale on the  
20 website?

21 A. Youngevity.

22 Q. If they wanted to get more hits, more people to come to  
23 their website, was there something that they could purchase to  
24 get more hits on their website?

25 A. That was the idea for some of the services that we offered,

IB5JKET5

Finocchiaro - cross

1 we would have said that.

2 Q. So is there another way that somebody who has a website  
3 selling another product that has been shipped automatically is  
4 suppose to do to run their website?

5 MS. FLETCHER: Objection to form.

6 THE COURT: Sustained.

7 MR. SCHMIDT: I'll withdraw it.

8 BY MR. SCHMIDT:

9 Q. Now, you signed up for Youngevity, didn't you?

10 A. That's correct.

11 Q. And Bill signed up for Youngevity, didn't he?

12 A. Yes, sir.

13 Q. And you got checks from Youngevity, didn't you?

14 A. Yes, I did.

15 Q. What did you do to make your website that much better?

16 A. I actually didn't do anything.

17 Q. And Bill didn't do anything, either, did he?

18 A. That's correct.

19 Q. And you both got checks?

20 You both got checks from Youngevity even though you  
21 didn't do anything, right?

22 A. That's correct.

23 Q. Now, when Andrew started working at Olive Branch, he wasn't  
24 using drugs, was he?

25 A. Not to my knowledge.

IB5JKET5

Finocchiaro - cross

1 Q. He started using drugs when you went out to a Giants  
2 football game with him, didn't he?

3 A. That I have no idea.

4 Q. It was you that gave him pills, right?

5 A. There have been times, but I don't believe that was the  
6 first time.

7 Q. You sold him pills, didn't you?

8 A. At times.

9 Q. You actually told him that you needed him to pee in a cup  
10 because you needed it for the doctor that you were going to,  
11 but you actually gave that cup to Arash. Isn't that right?

12 A. Well, that is true.

13 Q. When he came back to Olive Branch after leaving Arash's  
14 basement, right, you gave him pills again, didn't you?

15 A. If he asked for them.

16 Q. And you sold them to him, didn't you?

17 A. That's correct.

18 Q. Now, you talked a little bit about grant leads. We had a  
19 little confusion between selling grants and leads from the  
20 previous company that sold grants. Do you remember that?

21 A. Yes, that's accurate.

22 Q. Now, generally Olive Branch and whatever the company was  
23 called would get leads from companies that sold something  
24 first. Is that right?

25 A. Yes, sir.

IB5JKET5

Finocchiaro - cross

1 Q. And the reason that was necessary was because generally  
2 Olive Branch wasn't selling any businesses that made money,  
3 they were selling product that would help the business. Would  
4 that be fair to say?

5 A. That's accurate.

6 Q. Until Youngevity came?

7 A. Yes, it was.

8 Q. It was clear to -- when I say "you," I take it back.

9 You and Bill made it clear, based on the products that  
10 you were selling, you can't make any kind of earnings claims to  
11 the customers that they were talking to. Is that right?

12 MS. FLETCHER: Objection to, "making it clear."

13 THE COURT: Rephrase it.

14 BY MR. SCHMIDT:

15 Q. You told the salespeople --

16 THE COURT: Didn't you tell the salespeople not to  
17 make specific earnings claims?

18 THE WITNESS: That's correct.

19 THE COURT: Next.

20 BY MR. SCHMIDT:

21 Q. And you told them many times?

22 A. That was one of the rules.

23 Q. And if somebody was caught doing that, right, not only  
24 would that person be talked to, you would probably talk to  
25 everybody else?

IB5JKET5

Finocchiaro - cross

1 MS. FLETCHER: Objection.

2 THE COURT: Sustained. What was the result if  
3 somebody was caught making a specific earnings claim on the  
4 telephone?

5 THE WITNESS: We would talk to them first. If it was  
6 a repeated offense, they would get fired.

7 BY MR. SCHMIDT:

8 Q. You told us about the recordings that were being done at  
9 some point. Do you remember? Do you remember testifying to  
10 that?

11 A. Yes, sir.

12 Q. Now, in fact, you or Bill deleted the recordings, didn't  
13 you?

14 A. It wasn't specifically us that deleted it, but we were  
15 told --

16 Q. You caused it to be deleted?

17 MS. FLETCHER: Objection.

18 Q. Would that be a fair statement?

19 MS. FLETCHER: The witness did not finish the answer.

20 Q. Did you finish?

21 THE COURT: Did you finish your answer?

22 THE WITNESS: I was still answering that one.

23 THE COURT: Go.

24 THE WITNESS: It was recommended we don't have to have  
25 the recording any more. So we were also trying to save money,



IB5JKET5

Finocchiaro - cross

1 and that was something we eliminated.

2 BY MR. SCHMIDT:

3 Q. Other people in the business who were experienced at this  
4 biz-op business told you it wasn't particularly a good idea to  
5 keep recordings. Isn't that correct?

6 A. Yeah, that's correct.

7 Q. Now, your office got communications from Paul Curtis during  
8 the period of time that he was monitoring the telephone calls,  
9 right?

10 A. Yes, for a period of time, he did, yeah.

11 Q. Do you recall what period of time that was or how long of a  
12 period of time that was?

13 A. Again my dates are a little out of whack. I would say he  
14 used them for a year and a half, two years. I could be a  
15 little off there.

16 Q. Now, did you get to see the correspondence from Mr. Curtis  
17 related to his monitoring?

18 A. We would get notified in an email.

19 Q. And you would get -- both you or Bill would get the email,  
20 if you know, or the main -- withdrawn.

21 Where would the email come to?

22 A. I believe it was our main Olive Branch account or one of  
23 the main emails.

24 Q. Now, were there some of the complaints made by Mr. Curtis  
25 in the forms that were not treated particularly serious?

IB5JKET5

Finocchiaro - cross

1 MS. FLETCHER: Objection. By whom?

2 BY MR. SCHMIDT:

3 Q. By you and Bill?

4 A. Can you be more specific. I don't know what --

5 Q. If the person didn't read the closing script, would  
6 somebody get fined for not reading the closing script?

7 MS. FLETCHER: Objection to form.

8 THE COURT: Yes, sustained.

9 BY MR. SCHMIDT:

10 Q. Did you or Bill fine people for not reading the closing  
11 script?

12 A. Everybody got warned. There very well could have been. I  
13 can't say for certain.

14 Q. Did people get fined for not mentioning the specific entity  
15 that was going to be the billing entity?

16 A. That's something that we would have, we would have  
17 explained, and if it was happening excessively, we would have  
18 issued a fine.

19 Q. Were there some things you really didn't have to happen  
20 excessively before fines or issues, right?

21 A. From what I remember, we would at least give a warning at  
22 first.

23 Q. For people who had earning statements, at most they would  
24 get one warning before they would get fired. Is that fair?

25 A. It would have to be on a case-by-case, depending on the

IB5JKET5

Finocchiaro - cross

1 certainty of how it sounded.

2 Q. If somebody would say that well, this is a product that in  
3 your industry you need, you really need to have to be  
4 successful, would that cause a fine to be issued by you or Bill  
5 with one warning or maybe more than one warning?

6 MS. FLETCHER: Objection to form.

7 THE COURT: Sustained as to form.

8 BY MR. SCHMIDT:

9 Q. What were the ones that you considered the most serious  
10 violations of policy in the warnings that you received from Mr.  
11 Curtis?

12 A. An earnings claim as well as if a customer had no idea what  
13 was going on in the call, they were taking the credit card and  
14 processing it.

15 Q. In fact, some of the complaints or charge-backs were where  
16 the customer had no idea that he was getting charged money for  
17 something --

18 MS. FLETCHER: Objection.

19 Q. -- is that correct?

20 THE COURT: Just a moment. Can you answer that  
21 question, sir? Overruled.

22 A. In this situation -- can you repeat that. I am sorry.

23 (Continued on next page)

IB58KET6

Finocchiaro - Cross

1 Q. You said one of the more serious offenses was basically  
2 charging somebody's credit card when it was clear that the  
3 customer had no idea that that was going to happen?

4 A. That and earnings claim.

5 Q. I know the earnings claim. But another one was -- the  
6 second one was charging somebody's credit card when it was  
7 clear that the customer didn't understand that that was going  
8 to be done?

9 A. Not of sound mind, meaning --

10 THE COURT: Meaning what?

11 A. Meaning that the potential client literally was almost to  
12 the point where they weren't of their right mind; they didn't  
13 know what was going on, to the point where they are not well.  
14 They could have been sickly or some sort of mental issue or  
15 whatever it may have been.

16 Q. But you did have rules, both at some age, and if there was  
17 any indication that a client may be confused and not  
18 sufficiently aware of what is going on, that before anything  
19 could be done, you or Bill would have to speak to that person,  
20 is that correct?

21 THE COURT: "That person" meaning that salesperson?

22 Q. The customer. To make sure what was going on.

23 THE COURT: Is that true, yes or no?

24 A. Yes, it is.

25 Q. So the violation would be somebody basically not bringing

IB58KET6

Finocchiaro - Cross

1 you or Bill over to speak to the potential customer and just  
2 going through with the charge?

3 A. That's true.

4 Q. What was the result or reaction of you and Bill for reports  
5 that a salesman was excessively aggressive?

6 MS. FLETCHER: Objection to form.

7 THE COURT: Sustained.

8 Q. Did you receive complaints, or whatever those forms are  
9 called, from Mr. Curtis that a salesman in an instant was  
10 excessively aggressive to a potential customer?

11 A. I can't recall one offhand, but I'm sure that would have  
12 been part of the process.

13 Q. Would it be fair to say at times Arash Ketabchi was  
14 excessively aggressive?

15 A. Arash, yes.

16 Q. Would it be fair to say that Chris Wilson was excessively  
17 aggressive at times?

18 A. That's correct.

19 Q. And would it be fair to say that Pete DiQuarto was  
20 excessively aggressive at times?

21 A. At times, yes.

22 Q. And would it be fair to say that you have never heard  
23 Andrew Owimrin be excessively aggressive?

24 A. I can't say that I have.

25 Q. Now, back to grant leads.

IB58KET6

Finocchiaro - Cross

1 Now, the leads that came from the people who sold  
2 grants included not only the grants, but also the Web site or  
3 business that was going to be accompanying the grant, is that  
4 right?

5 A. Yes, that sounds correct.

6 Q. Now, do you have any idea of what the -- withdrawn.

7 You said for a week or two you had some salespeople  
8 selling from grants lists, is that right?

9 A. That's correct.

10 Q. What was the price to sell a grant to some sucker?

11 A. From what I recall with the grant, there was no set price.

12 I'm sorry. Are you talking about when we were selling  
13 the grants or grant leads?

14 Q. When you were -- the week or two that you brought in those  
15 guys from out west, sat them down and had them sell grants.  
16 How much were the grants? How much did it cost for a grant?

17 A. It was open-ended, from what I remember.

18 Q. Could you give us a general idea of the low cost, medium  
19 cost and a high cost?

20 A. I can't say for certain, but I would assume \$1,000, maybe  
21 up to 20,000.

22 THE COURT: Was it up to each salesman to set the  
23 price of the grant that he was attempting to sell?

24 THE WITNESS: Yes, your Honor. It was based on how  
25 much money was available.

IB58KET6

Finocchiaro - Cross

1 THE COURT: You mean how much money the customer said  
2 they had to spend?

3 THE WITNESS: Yeah, available. That's accurate, your  
4 Honor.

5 THE COURT: All right.

6 BY MR. SCHMIDT:

7 Q. Depending on how much the customer got to spend also  
8 depended on what they received or thought they were going to  
9 receive in the nature of a Web site and a business, is that  
10 right?

11 MS. FLETCHER: Objection to what they thought.

12 THE COURT: Sustained.

13 Q. Depending on how much a customer was going to spend, it was  
14 your understanding the salespeople would then include certain  
15 items, including a Web site and a business?

16 A. I don't recall.

17 Q. So how did the Web site and the business get associated  
18 with the grant?

19 A. The grant was such a short time, I don't recall the full  
20 services that went along with that.

21 Q. You had a disagreement with your partner about this attempt  
22 to sell grants, is that right?

23 A. Yes, I did.

24 Q. Now, you were against it, would that be fair to say?

25 A. Yes, I was.

IB58KET6

Finocchiaro - Cross

1 Q. And Mr. Sinclair was less against it than you?

2 A. That's fair, yes.

3 Q. But the guys who came -- within a very short period of time  
4 there were numerous arguments, disagreements between the people  
5 who came from out west, who were the grant people, and you and  
6 Bill, would that be fair to say?

7 A. Not so much myself. He spoke to the head of their grant  
8 company. That was more of an argument. I never talked to the  
9 guy really.

10 Q. You really backed out and tried not to be involved in that  
11 at all, would that be fair?

12 A. To an extent.

13 Q. Now, you have talked about doing what you could to stay in  
14 the gray area. Remember testifying about that?

15 A. Yes, sir.

16 Q. One of the things that you testified about to try to help  
17 to stay in the gray area was having Paul Curtis monitor the  
18 telephone calls, is that right?

19 A. That's accurate.

20 Q. And that would include the warnings, additional training,  
21 and fines to the salespeople, is that right?

22 A. Yes, sir.

23 Q. So when you say trying to stay in the gray area, you are  
24 basically saying that you were making efforts to try to prevent  
25 your salespeople from saying things that they weren't supposed



IB58KET6

Finocchiaro - Cross

1 to say, is that right?

2 A. It's a little more to it than that.

3 Q. Go for it.

4 A. We had things in place to avoid being blatant where we  
5 would have trouble with, whether it be the FTC or legal issues  
6 with authorities.

7 Q. And most of the people there in sales, over the course of  
8 the time that you were at Olive Branch, not all but most, they  
9 came from places like The Tax Club and other biz-op marketing  
10 places, is that right?

11 A. At times, yes.

12 Q. You're aware that Andrew and Reagan Owimrin had no  
13 background whatsoever in biz-op marketing, is that right?

14 A. That is correct.

15 Q. And you and Bill made it clear to Andrew and Reagan what  
16 they should not be doing when they are making sales calls, is  
17 that fair?

18 MS. FLETCHER: Objection to making it clear.

19 MR. SCHMIDT: I will withdraw that question, Judge.

20 Q. Did you or Bill inform Andrew and Reagan what should not be  
21 done in these telephone calls to customers?

22 A. Absolutely.

23 Q. When it was explained to Andrew and Reagan, did you tell  
24 them, Oh, the reason we don't want you to do this is because we  
25 want to stay in the gray area? Did you say something like

IB58KET6

Finocchiaro - Cross

1 that?

2 A. We didn't really talk like that.

3 Q. So you didn't say that, right?

4 A. Not that I recall.

5 Q. You said, basically, this is the right way to do it, that's  
6 the wrong way to do it; is that fair to say?

7 MS. FLETCHER: Objection.

8 THE COURT: I will allow that.

9 A. Yeah. We would tell them, this is how you say it and don't  
10 say it this way because you're making a blatant earnings claim.  
11 That's what we would have explained.

12 Q. When you say you're making a blatant earnings claim, did  
13 you say that it was wrong, it was unethical, it was illegal,  
14 you will get into trouble, or something of that nature?

15 A. Just say it's going to cause cancellations and problems.

16 Q. So you didn't use anything that would make it seem like it  
17 was unethical or illegal, it was just problematic; is that what  
18 your testimony is?

19 MS. FLETCHER: Objection.

20 THE COURT: I will allow it.

21 Can you answer it?

22 A. That's what would have been explained to the sales manager,  
23 and it was his job to do the hands-on training.

24 THE COURT: I think you said you were interested in  
25 stopping the most blatant violations, is that correct?

IB58KET6

Finocchiaro - Cross

1 THE WITNESS: Yes.

2 THE COURT: But ones that were closer to the line did  
3 you allow?

4 THE WITNESS: We didn't allow anything that was on our  
5 list. Blatant earnings claims, there were certain ways to go  
6 about saying it.

7 THE COURT: All right.

8 Q. His Honor asked you, basically, did you permit, when you  
9 were talking to someone who had no experience in biz-ops, did  
10 you tell them that they are allowed to do something that you  
11 believed was near the line?

12 A. Conversations like that, it wasn't specific in that nature.  
13 It was, here's the script, learn it, follow it, done.

14 Q. It was your intention for them to believe that that was the  
15 proper way of doing it versus the other way, which was the  
16 wrong way of doing it, is that correct?

17 MS. FLETCHER: Objection.

18 THE COURT: Sustained.

19 Did you tell them following the script was the proper  
20 way?

21 THE WITNESS: That's what we explained to them, just  
22 follow it word for word.

23 THE COURT: Did you tell them not following the script  
24 was not the proper way?

25 THE WITNESS: We said as long as they don't break the

IB58KET6

Finocchiaro - Cross

1 rules, they can put it into their own words over time as they  
2 felt more comfortable, your Honor.

3 THE COURT: Next question.

4 Q. Now, you described that the wrong way was making blatant  
5 earning statements, but that it was OK to do a certain spin on  
6 it so maybe the customers would think that they are getting  
7 promises of earnings, is that right?

8 A. That's accurate.

9 Q. Now, when you told people who had never worked in the  
10 biz-op field before that you can say this, that's OK, but not  
11 that, did you explain to them that that was just a spin that  
12 you were putting on it?

13 A. Not that I recall. We explained --

14 Q. This is the right way, that's the wrong way, is that  
15 correct?

16 MS. FLETCHER: Objection. He keeps cutting the  
17 witness off.

18 THE COURT: Had you finished? You started to say "we  
19 explained."

20 A. We just explained that you can't make a blatant earnings  
21 claim. This is how you have to say it.

22 THE COURT: Move on. You have been over the blatant  
23 earnings claim issue, back and forth.

24 Next.

25 Q. You said during that period of time, from 3 to 14 days to

IB58KET6

Finocchiaro - Cross

1 save a sale, that you often had Andrew make calls as well as  
2 you making calls, is that right?

3 A. At times, if he would help me out, yes.

4 Q. Maybe I shouldn't use the word often. It was when you were  
5 getting overloaded with the calls, you would sometimes seek  
6 Andrew to make a few calls for you?

7 A. That's fair, yes.

8 Q. The reason why you chose Andrew was because of the way he  
9 talked to people, is that right?

10 A. He was good at what he did.

11 THE COURT: He was a good salesman?

12 MR. SCHMIDT: That was not my question, your Honor.

13 THE COURT: That was mine.

14 Q. He was a nice-sounding person on the phone and in person?

15 A. Yes. He understood what --

16 Q. I am not asking about understanding. I am just asking you  
17 what he sounded like to you.

18 A. He was good.

19 Q. Did he sound nice?

20 THE COURT: Sir, I think part of the problem is I  
21 don't understand "nice." Do you mean somebody spoke with  
22 dulcet tones? Do you mean that they spoke correct English? Do  
23 you mean they engaged in the other person to think favorably of  
24 them? So rephrase it in a way that even I can answer it.

25 Q. When he talked, he sounded sincere?

IB58KET6

Finocchiaro - Cross

1 A. That's accurate.

2 Q. Now, did you ask Arash to make these phone calls?

3 A. He has, if it was his client.

4 Q. Is he the choice to make the phone calls because he also  
5 sounds so sincere?

6 A. He was more of a steamroller in terms of more aggressive.

7 Q. And so was Chris Wilson?

8 A. They were --

9 Q. He was more of a steamroller also, wasn't he?

10 MS. FLETCHER: Objection.

11 THE COURT: You have to let him answer.

12 MR. SCHMIDT: He wasn't answering my question, Judge.

13 THE COURT: Just ask the next question.

14 Q. He was more of a steamroller, wasn't he, Chris Wilson?

15 A. Yes.

16 Q. And Pete DiQuarto was pretty much an aggressive  
17 steamroller, wasn't he?

18 A. Not so much.

19 Q. A little bit less than the other two?

20 A. He was actually a very good salesman, had low retention.

21 Q. Low?

22 A. His cancellations weren't as bad from what I remember.

23 Q. And that's because he --

24 THE COURT: What was the reason for his cancellations  
25 not being as bad?

IB58KET6

Finocchiaro - Cross

1 THE WITNESS: He had a very good rapport with all of  
2 his clients. He was very thorough. He would always make  
3 himself available. He put time and effort in, took that extra  
4 step. So if there were questions, he wanted to speak to his  
5 clients so they knew it's the same voice; they are not hearing  
6 another person come in. He was very hands-on.

7 Q. You testified here about the maximum sentence you could  
8 receive?

9 A. Yes, I recall.

10 Q. You also testified about the guidelines. Do you remember?

11 A. That's correct.

12 Q. What are the guidelines? What does that mean to you?

13 A. The guideline, it's the sentencing guidelines, where you  
14 could potentially -- if you're found guilty, what you could be  
15 put in jail for.

16 Q. Do you have an understanding now of approximately what your  
17 sentencing guidelines would be?

18 A. I have an idea, yes.

19 Q. What is that?

20 MS. FLETCHER: Objection.

21 THE COURT: If he believes he has an idea, I will hear  
22 that idea.

23 MS. FLETCHER: Your Honor, I am concerned about the  
24 basis for the idea.

25 THE COURT: Let's see if he has an idea, and we can

IB58KET6

Finocchiaro - Cross

1 establish the basis.

2 Do you have an idea, sir, as to what approximately  
3 your sentencing guidelines will be?

4 THE WITNESS: I am just looking off the -- what's it  
5 called --

6 Q. The cooperation agreement?

7 THE WITNESS: -- the agreement, sir. Your Honor,  
8 that's what I am referring to, just what I read off of that.

9 THE COURT: What is that understanding?

10 THE WITNESS: It could be anywhere from, depending on  
11 the decision, I guess probation to potentially 80 years in  
12 prison.

13 Q. That's your understanding of the sentencing guidelines for  
14 your case?

15 A. That's what is on the paper and that's what I gathered.

16 MR. SCHMIDT: May I have one moment, your Honor?

17 Q. Now, I am going to show you what has been previously  
18 entered into evidence as PC 21 and 22 -- PC 16, pages 21 and  
19 22.

20 MR. SCHMIDT: It would be faster if I approach the  
21 witness, your Honor.

22 THE COURT: It's in evidence?

23 MR. SCHMIDT: Yes.

24 THE COURT: How much longer do you have?

25 MR. SCHMIDT: Five minutes.



IB58KET6

Finocchiaro - Cross

1 Q. Can you see that monitoring form?

2 THE COURT: Take a look at the screen.

3 Do you see that document?

4 Q. Do you see that?

5 A. Yes, I do.

6 Q. You see the first one, the violation of company policy  
7 calling credit card without the client on the phone?

8 A. Yes, sir.

9 Q. And the second one?

10 A. Yes. You want me to read it?

11 Q. No. Everybody can see it.

12 And the third one?

13 THE COURT: Do you see it?

14 THE WITNESS: Yes, I do.

15 THE COURT: Next.

16 Q. Is this consistent with what you said about how nice and  
17 sweet Pete DiQuarto is to his customers?

18 MS. FLETCHER: Objection.

19 MR. SCHMIDT: Withdrawn.

20 Q. Is this consistent with your testimony of Pete DiQuarto's  
21 relationship with his customers and potential customers?

22 A. Can I explain?

23 Q. Yes, of course.

24 A. He would sell a lot more clients. So, of course, there is  
25 going to be cancellations, but his retention, from what I

IB58KET6

Finocchiaro - Redirect

1 remember, was very low, which made us happier because we didn't  
2 have to clean up a lot of his deals.

3 Q. And when he spoke to his clients to try to save a sale, was  
4 he also still overly aggressive when he tried to save a sale?

5 A. Again, I can't recall a specific time. I just remember  
6 that he had low retention compared to some of our other  
7 salesmen.

8 MR. SCHMIDT: I am finished, your Honor. Thank you  
9 very much.

10 THE COURT: Is there any redirect?

11 MR. PAUL: Just a question or two.

12 REDIRECT EXAMINATION

13 BY MR. PAUL:

14 Q. Mr. Finocchiaro, you were asked questions about saves,  
15 correct?

16 A. Yes, sir.

17 Q. This was one of the things you did among others, such as  
18 chargebacks, correct?

19 A. That's correct.

20 Q. You told us that you had a conversation with Steve Ketabchi  
21 about how he can deal with chargebacks, right?

22 A. Yes.

23 Q. As you sit here now, do you remember whether you actually  
24 talked to Steven Ketabchi about doing saves?

25 A. I don't recall saves.

IB58KET6

1 Q. You don't recall talking to him about that aspect about the  
2 chargebacks that you did?

3 A. We spoke about the chargebacks.

4 Q. But you don't recall talking to him about the saves that  
5 you conducted before any chargeback response, right?

6 A. Well, the idea is if you save the client before it gets to  
7 that point, then it could be viewed that way, but --

8 Q. My question is, do you know or remember talking to Steven  
9 Ketabchi about doing saves before he conducted any response  
10 with regard to chargebacks?

11 A. Not that I recall.

12 MR. PAUL: Thank you.

13 Nothing further.

14 THE COURT: Thank you.

15 Next witness.

16 MS. FLETCHER: The government doesn't have any  
17 questions for this witness, but we would offer Government  
18 Exhibit 818 into evidence.

19 MR. SCHMIDT: May we have a moment, your Honor?

20 THE COURT: It's the cooperation agreement. It seems  
21 to me appropriate. Any objection?

22 MR. PAUL: No.

23 MR. SCHMIDT: No.

24 THE COURT: 818 admitted.

25 (Government's Exhibit 818 received in evidence)

IB58KET6

1 THE COURT: You may step down, sir. You are excused.

2 (Witness excused)

3 THE COURT: Next witness for Mr. Shahram Ketabchi.

4 MR. PAUL: The defense rests, your Honor.

5 THE COURT: Let's have a sidebar quickly.

6 (At the sidebar)

7 THE COURT: I take it no rebuttal case?

8 MS. FLETCHER: No.

9 THE COURT: All we have to do is the summations.

10 How long is the opening summation?

11 MS. FLETCHER: Probably 90 minutes, maybe less.

12 THE COURT: Who goes first on the defense?

13 Mr. Schmidt, how long is your closing?

14 MR. SCHMIDT: Probably 90 minutes.

15 THE COURT: Are you going to join the crowd?

16 MR. PAUL: Why not.

17 THE COURT: So that's about four and a half hours.

18 Well, let's try to do everything we can to move it  
19 forward. We will have your summation now. We should be able  
20 to get it in.

21 MS. FLETCHER: Can we give the jury a short break?

22 THE COURT: Yes.

23 (In open court)

24 THE COURT: Ladies and gentlemen, let's take simply  
25 ten minutes. I take it the temperature is also getting a

IB58KET6

1 little warm.

2 (Jury exits courtroom)

3 THE COURT: Ten minutes.

4 (Recess)

5 (Continued on next page)

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

IB58KET6

Summation - Ms. Fletcher

1 (Jury present)

2 THE COURT: Please be seated in the courtroom.

3 I hope that was a refreshing break, ladies and  
4 gentlemen.

5 We are now going to move on to the next phase of the  
6 trial. You have seen all three of the parties rest, so there  
7 is no more testimony. But I don't want you to make up your  
8 minds yet because we have three more phases -- the summations  
9 of the lawyers, my charge to you on the law, and your  
10 deliberations.

11 Now, the order of summations is set by law. The  
12 parties have no role in the order. The government goes first,  
13 then the defendants, and then the government gets a rebuttal  
14 summation. It gets to talk to you last because, as you know,  
15 it bears the burden of proof here.

16 I want you to listen to what the lawyers say. As I  
17 told you at the beginning of this case, my strong assumption is  
18 that the lawyers will tell you what the evidence showed and the  
19 conclusions that they want you to draw from that evidence. As  
20 I say, I want you to listen to it.

21 But remember, you decide what the evidence showed,  
22 they don't. And you will have an opportunity, as you know, to  
23 go back over the exhibits, and if you want to have some of the  
24 testimony read back to you. So just because they say this was  
25 the evidence doesn't mean that was the evidence. But again,

IB58KET6

Summation - Ms. Fletcher

1 listen to them. And remember, what they say is not evidence.

2 All right. The opening summation for the government  
3 will be given by Ms. Fletcher, is that correct?

4 Ms. Fletcher, please.

5 MS. FLETCHER: Thank you, your Honor.

6 Andrew Owimrin and Shahram Ketabchi committed a  
7 shameful, calculated fraud. Along with their business  
8 partners, they stole from some of this country's most  
9 vulnerable victims. Squeezing every last dollar from elderly  
10 and retired people with promises of earnings from online  
11 businesses that did not exist.

12 This was a long con. It required that Owimrin and  
13 Ketabchi each perform their own part in order to succeed.  
14 Owimrin and the other salespeople were the face of the company.  
15 They called the victims. They gave the biz-op pitch. They  
16 assured the victims that they would have to put in no effort  
17 themselves, just pay the money and sit back and watch the  
18 checks roll in.

19 Owimrin and his partners targeted the most gullible  
20 people they could get on their hands on. Elderly and retired  
21 people, with no business experience, who were looking for a way  
22 to earn income from home. And they convinced these people that  
23 if they only made a cash investment, that the telemarketing  
24 company would take care of the rest.

25 Owimrin played on his victims' emotions -- their hopes

IB58KET6

Summation - Ms. Fletcher

1 and their fears about their future, their plans for retirement,  
2 their desire to spend more time with their family. He took  
3 advantage of these hopes to suit his own needs. He convinced  
4 them, just hang in there, buy tens of thousands of dollars  
5 worth of products and services to help their nonexistent  
6 businesses succeed.

7 He took advantage of their lack of business acumen by  
8 using fancy words like "corporate credit" and "search engine  
9 optimization." But these products and services were nothing  
10 but some boilerplate cookie cutter pamphlet. A pamphlet and a  
11 string of phone calls designed to keep the victims on the hook  
12 until it was too late to cancel. And when the victims realized  
13 they had been defrauded, and tried to get their credit card  
14 companies to reverse their charges, the defendants doubled  
15 down. And that's where Shahram Ketabchi came in.

16 While Owimrin faced outward and interacted with the  
17 public, Ketabchi was the guy behind the scenes. He kept the  
18 company running, making sure the e-mail worked, and the  
19 salespeople got paid, and the contracts were mailed out. He  
20 kept track of the bank accounts and the merchant accounts used  
21 to process the victims' credit cards. And it was Ketabchi who  
22 fought the chargebacks. He collected and submitted the bogus  
23 fulfillment documents, insisting to the credit card companies  
24 that the customers got what they paid for, and the online  
25 businesses were real. When he won a chargeback, that money,



IB58KET6

Summation - Ms. Fletcher

1 money that had been stolen from the customers, was sent back  
2 into his company's bank account to keep funding the scheme.  
3 And the victim was left without recourse and with thousands of  
4 dollars in debt.

5 Now, you have seen this play out over and over again  
6 during the course of this trial. Over the last two weeks, you  
7 have seen and heard that evidence. This summation is the  
8 government's opportunity to talk through that evidence and  
9 explain to you how it all fits together. Because now the proof  
10 is in. It's clear, it's consistent, and it is not complicated.  
11 Andrew Owimrin and Shahram Ketabchi are guilty as charged.

12 Now, I am going to start by talking to you briefly  
13 about the charges.

14 Count One charges the defendants with conspiracy to  
15 commit wire fraud. As Judge Stein has told you, his  
16 instructions on the law control. But I expect he will tell you  
17 that someone conspires to commit wire fraud when they agree  
18 with others to defraud victims using interstate wires. I also  
19 expect he will tell you that to defraud just means to lie,  
20 mislead, or take advantage of someone to get them to give you  
21 money. And that the use of interstate wires includes making  
22 phone calls from one state to another.

23 Count Two charges the defendants with conspiracy to  
24 commit money laundering. I expect Judge Stein will tell you  
25 that someone conspires to commit money laundering when they

IB58KET6

Summation - Ms. Fletcher

1 agree with others to move money obtained through other crimes.

2 Here, the defendants are charged with agreeing to  
3 commit money laundering in two ways. First, by wiring, and  
4 otherwise moving the proceeds of the telemarketing fraud, in  
5 order to promote the telemarketing fraud. That means to help  
6 the telemarketing fraud succeed. And second, to moving more  
7 than \$10,000 in crime proceeds.

8 Now, you have seen and heard a lot of evidence in this  
9 case, and by now you know that it's pretty straightforward. As  
10 you consider that evidence, I suspect you will see that there  
11 is not much that is in serious dispute.

12 There is no serious dispute that Andrew Owimrin and  
13 Shahram Ketabchi worked for a telemarketing sales floor where  
14 they were supervised by Arash Ketabchi.

15 There is no serious dispute that A1 Business  
16 Consultants and Olive Branch Marketing were telemarketing sales  
17 floors where employees contacted victims over the phone and  
18 sold them so-called business services, like business plans and  
19 corporate credit.

20 There is no serious dispute that multiple victims  
21 provided A1 and Olive Branch with thousands of dollars each,  
22 with the understanding that they would earn money from an  
23 at-home Web site or merchant processing business.

24 There is no serious dispute that these victims never  
25 made the money they expected, and that some of them fought to

IB58KET6

Summation - Ms. Fletcher

1 get their money back through chargebacks.

2 Finally, there is no serious dispute that Shahram  
3 Ketabchi fought these chargebacks so A1 could keep the money  
4 from the sales and keep their merchant accounts open.

5 The evidence is crystal clear on these points. So I  
6 am not going to spend a lot of time on them today.

7 So what is in dispute? The only issue, and I mean the  
8 only issue here, is whether the defendants knew that what they  
9 were doing was committing a fraud and a money laundering  
10 scheme, when they made the sales and when they fought the  
11 chargebacks?

12 The overwhelming evidence in this case and your common  
13 sense tell you, of course they did.

14 I am going to walk you through the evidence now, and I  
15 will focus you on the parts of the evidence that prove to you  
16 beyond any reasonable doubt that the defendants knew exactly  
17 what they were doing when they made sales to the victims and  
18 fought to keep the victims' money.

19 Andrew Owimrin lied to victims when he said his  
20 company would operate the victims' at-home businesses, and the  
21 victims didn't have to do anything except watch the money roll  
22 in.

23 Andrew Owimrin lied to Jane Thompson to get her to  
24 hand over her entire life savings for a so-called merchant  
25 terminal business and a phony partnership in A1.

IB58KET6

Summation - Ms. Fletcher

1 Shahram Ketabchi, who, as you now know, goes by Steve,  
2 helped his brother Arash to keep that money and to keep the Al  
3 merchant accounts open, even though Shahram Ketabchi knew that  
4 the customers had been duped when they gave Al their money.

5 Shahram Ketabchi knew because he saw the complaints  
6 that those victims sent to their credit card companies and to  
7 regulatory bodies like the New Jersey state attorney general's  
8 office.

9 Both of the defendants sat up here, up here, and they  
10 lied to you. They made excuse after excuse, and told lie after  
11 lie, in an effort to point the finger at Arash instead of at  
12 themselves. The defendants' words and their actions tell you  
13 that they knew they were perpetrating a fraud and a money  
14 laundering scheme in three distinct ways:

15 First, you know because victim after victim told you  
16 that Andrew Owimrin lied to them to get their money, and the  
17 evidence in this case shows he never thought their businesses  
18 were real. In other words, Andrew Owimrin and the other  
19 salespeople doubled down on the fraud committed by the coaching  
20 floors, coaching floors like Elite and other lead sources that  
21 you heard about;

22 Second, you know because Andrew Owimrin and Shahram  
23 Ketabchi were aware of this mountain of complaints that the  
24 victims made in an effort to get their money back through  
25 chargebacks. It was Shahram Ketabchi's job to double down on

IB58KET6

Summation - Ms. Fletcher

1 the sales floor's lies and to fight to keep the money; and

2 Third, you know because of the implausible lies that  
3 these two men told you when they testified before you in this  
4 courtroom.

5 Andrew Owimrin doubled down on the lead source fraud.  
6 Shahram Ketabchi doubled down on the salesman's fraud. Now  
7 they are both trying to double down on you.

8 Let's take these one by one. We will start with the  
9 lies that Andrew Owimrin told.

10 By now you know that he told the same lies to victim  
11 after victim to get them to invest thousands of dollars in  
12 bogus business services that he knew did not exist.

13 Now, Andrew started working at Olive Branch in early  
14 2014. You can see Government Exhibit 731, the office in  
15 Clifton, New Jersey, where that sales floor was operated.

16 He learned to sell from salespeople like Arash  
17 Ketabchi and Chris Wilson and Peter DiQuarto, salespeople who  
18 you heard just today were very aggressive, salespeople who you  
19 heard in the course of this trial had their calls flagged for  
20 doing inappropriate things. Those calls are in evidence as  
21 Defense Exhibit PC-16.

22 Now, Andrew Owimrin learned to sell in this tiny  
23 office, with an open sales floor where he could hear Arash  
24 loudly selling to clients.

25 Now, Andrew Owimrin didn't have the same style as

IB58KET6

Summation - Ms. Fletcher

1 Arash Ketabchi. You heard today that Arash Ketabchi was a  
2 steamroller. You also heard Andrew Owimrin speak. He wasn't a  
3 steamroller. That wasn't his sale style. His sale style was  
4 to put a smile on his face and sound like a nice guy so the  
5 customers would trust him.

6 This is the office. Remember that Bill Sinclair told  
7 you that this open room at the bottom of Government Exhibit 710  
8 is an open space, and Arash Ketabchi was loud, so everyone  
9 could hear the sales pitch that he was making in this room.

10 This is a photograph of what that sales floor looked  
11 like.

12 Government Exhibit 728 is an Instagram post that  
13 Andrew Owimrin made showing himself and other salespeople,  
14 including Christopher Wilson and William Sinclair, on the sales  
15 floor. It's not a big space.

16 Government Exhibit 729 is a photograph of Andrew  
17 Owimrin just in front of Arash Ketabchi, inside that office.

18 So he learned to sell from these aggressive  
19 salespeople. He didn't adopt their style, but he learned from  
20 them.

21 Andrew Owimrin sitting at his desk. And if you take a  
22 look at this Instagram post that is at Government Exhibit 713,  
23 you can see exactly how his sales manager encouraged him. You  
24 can see the message on Instagram. "The killer. 50k a week is  
25 a light week for him." Owimrin doesn't respond that he is not

IB58KET6

Summation - Ms. Fletcher

1 a killer. He says, "I've paid attention."

2 Now, Andrew Owimrin was reprimanded several times for  
3 making representations in sales calls that he was not permitted  
4 to make. You heard a lot about rules today again from Michael  
5 Finocchiaro. You know that there were rules in place. But you  
6 also know that the salespeople broke those rules, and they  
7 broke them consistently.

8 These are just three examples of Andrew Owimrin  
9 breaking those rules: At Government Exhibit 250, at Government  
10 Exhibit 251, and Government Exhibit 252 in evidence.

11 You also learned that while these calls were being  
12 monitored for some time, ultimately the management of the  
13 business decided it wasn't in their interest to monitor calls  
14 anymore and it stopped. And the salespeople, like Andrew  
15 Owimrin, were free to make any representations that they  
16 wanted, so long as they didn't make them so loud that Bill  
17 Sinclair and Michael Finocchiaro heard them.

18 By 2015, Andrew Owimrin was a gifted, savvy  
19 salesperson who was making sale after sale.

20 Focusing on his lies. Andrew Owimrin's lies tell you  
21 that he knew that his customers already had a so-called online  
22 business. He knew exactly how to leverage this fact so that  
23 the customer would be willing to spend tens of thousands of  
24 dollars on his so-called business services.

25 Bill Sinclair told you about this early in this trial.

IB58KET6

Summation - Ms. Fletcher

1 He told you that the salespeople wanted it to be a warm type of  
2 exchange. They wanted the potential customer to know that the  
3 salespeople were affiliated with the company that the customer  
4 had already purchased from.

5 (Continued on next page)



IB5JKET7

Summation - Ms. Fletcher

1           Mr. Finocchiaro told you something similar today.  
2           They wanted the customers to be primed for the biz-op sale.  
3           You don't have to take Bill Sinclair and Michael Finocchiaro's  
4           word for it. You saw the sales script referring to the sales  
5           made by the lead source so the victim knows who you're talking  
6           about and they warmed to your sales pitch.

7           By late 2015, Andrew Owimrin knew exactly how to make  
8           a sale. He consistently told customers they would make money  
9           from their online businesses if they just bought more services  
10          and his company would take care of everything.

11          You heard from Joe an La Morte. Before Andrew Owimrin  
12          spoke with Ms. La Morte, she told you she had made purchases  
13          with another website business company. You can see here on the  
14          appointment for her sale, she is listed as already having a  
15          internet business, Government Exhibit 502. She also testified  
16          before you that she understood she needed to purchase  
17          additional services to get her website to work.

18          She told you that she purchased those services from  
19          Andrew Owimrin. He sold her Youngevity that she heard a lot  
20          about especially today, but he also sold her Corporate Credit.  
21          Remember what Bill Sinclair told you about Corporate Credit.  
22          Corporate Credit didn't exist. The customers couldn't actually  
23          get Corporate Credit because they needed to present two years  
24          of financial statements, and none of the customers had  
25          financial statements because they didn't have real businesses.

IB5JKET7

Summation - Ms. Fletcher

1           So Andrew Owimrin sold Ms. La Morte these services.  
2           You'll recall Ms. La Morte told you he initially pitched her  
3           \$10,000.00 for these services, but she didn't have enough line  
4           of credit on her credit card. So what did he do? He got on  
5           the phone with her, he three-way called her credit card company  
6           and helped her open up another credit card with an \$8,000  
7           limit, at which point magically he was able to reduce the price  
8           to \$8,500 and maxed out the credit card.

9           Now, unlike a lot of the victims in this case, Ms. La  
10          Morte is a savvy New Yorker. She figured it out when she  
11          looked at the contract that it didn't have the promises that he  
12          made to her in it. It didn't mention he was going to get,  
13          didn't mention she was going to get checks everybody week,  
14          everybody other week, and so she called to cancel.

15          You also heard from Diane Weissenberger. She was the  
16          first witness in this trial, so that has been a couple of weeks  
17          now. Ms. Weissenberger told you she initially purchased some  
18          sort of merchant terminal business, and you saw Government  
19          Exhibit 403, the lead list that Bill Sinclair got that included  
20          Diane Weissenberger's name. The lead list makes clear she  
21          already had 300 leads sold to her. Those are leads to her  
22          so-called merchant terminal business.

23          On September 19th, Andrew Owimrin, then using the name  
24          Andrew Owens -- excuse me -- September 17 -- sold her  
25          \$13,999.00 worth of services including Youngevity, Corporate

IB5JKET7

Summation - Ms. Fletcher

1 Credit and silver bookkeeping, Government Exhibit 404, and her  
2 contract, 152. See Corporate Credit bookkeeping.

3 Now, she canceled the day after this. She, after  
4 canceling, was asked to sign a COS. You have seen her  
5 testimony about COS. That is the continuation of services  
6 agreement. Victims were asked to sign the COS to essentially  
7 bulletproof any charge-back that the victim may want to  
8 initiate after-the-fact. So when she came on Andrew Owens',  
9 Andrew Owimrin's appointment calendar on September 25th, 2015,  
10 he saw she had already signed the COS.

11 After this appointment, Andrew Owimrin left Olive  
12 Branch Marketing and started working for Arash Ketabchi at A1.  
13 He called Diane Weissenberger. If you take a look at your  
14 screen, you can see the portion of Ms. Weissenberger's  
15 testimony about what Andrew Owens told her, what she understood  
16 she was getting in exchange for her \$13,999.00 investment. It  
17 also makes clear that she told him over and over again she was  
18 not interested in doing any work for her business. He assured  
19 her she didn't have to, and that she had a one-year goal of  
20 making six figures.

21 so After Andrew Owimrin leaves Olive Branch, he joins  
22 up with Arash at A1 Business Consultants and he changes his  
23 name. He starts going by Jonathan Stewart and he calls Diane  
24 Weissenberger within a number of days to sell her more  
25 products. He sells her on 10-7 additional services including

IB5JKET7

Summation - Ms. Fletcher

1 business credit. Government Exhibit 411 B is the contract for  
2 Diane Weissenberger's next purchase, this time from A1 Business  
3 Consultants directly, dated October 7, 2015. When you look at  
4 the services he sold to her, you see a business plan and  
5 Corporate Credit, Corporate credit again.

6 Andrew Owimrin had just sold Diane Weissenberger  
7 Corporate Credit using the phone name Andrew Owens and sold her  
8 Corporate Credit days later using a different phone name,  
9 Jonathan Stewart. Ms. Weissenberger told you that she started  
10 calling Business Development Center, the company that she  
11 thought was affiliated with A1 business over and over again,  
12 and no one responded to her. She also told you she never got  
13 any of her money back.

14 You didn't see her in person, but you saw the  
15 videotaped deposition of Ms. Charlene Foster. You saw the  
16 contract for Ms. Foster. You saw it and you heard that Andrew  
17 Owimrin sold her \$20,000 worth of services in 2015. In 2015,  
18 Ms. Foster was 86 years' old. Mr. Owimrin sold her services  
19 like Corporate LLC, business plan, Corporate Credit, tax prep  
20 and a laptop. He sold her a laptop for an internet business  
21 that didn't exist. He sold her a laptop because she didn't  
22 have one.

23 now let's talk for a minute and talk about Ms. Foster.  
24 You heard Andrew Owimrin talk about Charlene Foster. This is  
25 Government Exhibit 122. The words that Andrew Owimrin used in

IB5JKET7

Summation - Ms. Fletcher

1 that conversation, a conversation he didn't know was being  
2 recorded, those words tell you everything that you need to know  
3 about this case. If you listen to nothing else, listen to  
4 those words. When Andrew Owimrin talked about Charlene in that  
5 call that we'll play for you in a minute, he didn't talk about  
6 how he was excited to sell her these services for her business.  
7 He didn't say that he was going to talk to her about some new  
8 services for her business he thought she might like. He said  
9 he was going to put at least 20 grand on the credit card  
10 because Charlene thought that Elite had already charged her and  
11 she wouldn't know any better. Let's listen to that.

12 Ms. Lee, can you play it.

13 (Videotape played)

14 MS. FLETCHER: Andrew Owimrin was banking on the fact  
15 that Charlene would be too confused to realize what he had  
16 done. She wouldn't know the difference that he had charged  
17 \$20,000 to her card or if another company had.

18 When Andrew Owimrin told the lies that he told the  
19 customers, he knew the businesses weren't real and that the  
20 customers would never make money. Bill Sinclair told you about  
21 an incident when Ray Quiles talked to the sales floor about a  
22 customer that had made money and he told you that that stood  
23 out because based on the demographic and based on the type of  
24 customers that his sales floor talked to, nobody made money.

25 He told you that it was understood that these

IB5JKET7

Summation - Ms. Fletcher

1 businesses weren't real, that he didn't have to say it to the  
2 sales floor because it was obvious. He also told you about  
3 grant leads. He told you members of the sales floor sold to  
4 people who previously invested in a completely bogus government  
5 grant. Mr. Owimrin admitted that he sold to those grant leads  
6 as well.

7 Now, remember Andrew Owimrin's job was the  
8 salesperson. He sat on the phone with victims. He tried to  
9 sell them products. He heard their voices. He listened to  
10 their questions. He knew that he was speaking to people who  
11 would never be able to operate a successful online business.

12 Now, you saw some of those people in person. Saw  
13 Diane Weissenberger in person. You saw Jo Ann La Morte in  
14 person and you watched the videotaped deposition of Charlene  
15 Foster. Let's look at that for a minute.

16 (Videotape played)

17 MS. FLETCHER: Now, remember he spoke, Andrew Owimrin  
18 spoke to Charlene Foster when she was 86 years' old three years  
19 before this videotaped deposition. He knew full well, speaking  
20 to her, she was never going to be make money from an online  
21 business. She didn't have an online business. She didn't have  
22 a laptop before he sold her services.

23 But notwithstanding this, like the other salespeople  
24 at Olive Branch, Andrew Owimrin took advantage of the lies the  
25 coaches told. He told the victims they just needed to spend a

IB5JKET7

Summation - Ms. Fletcher

1 little more money to make their businesses legit and legal. He  
2 doubled-down on the leads versus lies.

3 You heard a lot about Youngevity. You heard a lot  
4 about Youngevity today from Mr. Schmidt and how salespeople  
5 were permitted to make earnings claims with respect to  
6 Youngevity at the beginning. There is nothing about Youngevity  
7 and the Youngevity business model that excuses the lies that  
8 Andrew Owimrin made to his victims. Youngevity was just  
9 another item in the grab-bag of products that Andrew Owimrin  
10 was permitted to sell to these victims. It was great for  
11 salespeople because it allowed the salespeople to slip into the  
12 sales pitch that the victims could definitely expect a check at  
13 some point in the next 60 to 90 days.

14 Importantly, Andrew Owimrin's conversations with the  
15 victims you heard from, with Diane Weissenberger, with Charlene  
16 Foster and with Jo Ann La Morte, were all well after it was  
17 clear that Youngevity was not going to work. Youngevity  
18 started in December of 2014 and customers were promised a check  
19 in 90 days. You heard from Bill Sinclair that he and Michael  
20 Finocchiaro started writing their customers checks because the  
21 checks weren't coming through.

22 The point I am making here is by the time these sales  
23 happened, Andrew Owimrin knows that Youngevity is not what he  
24 unusually thought it was. All of this, all of the victims we  
25 have just talked about, all of this predates Jane Thompson.

IB5JKET7

Summation - Ms. Fletcher

1 Jane Thompson is the whale. She is the victim with a lot of  
2 disposable cash from her retirement fund, who was desperate for  
3 a way to earn money from home so that she could spend time with  
4 her dying father.

5 Andrew Owimrin sold Jane Thompson every service he  
6 could possibly think of: Website, front-end web services,  
7 merchant account setup services, taps services. You can see  
8 the memo lines from her checks, Government Exhibit 904. Over  
9 time, she gave more than \$238,000.00 to A1 Business Consultants  
10 for different services, including the phoney partnership you  
11 heard about.

12 You have seen her checks. She told you that she made  
13 it clear that she did not want to sell anything, and Jonathan  
14 Stewart from A1 Business Consultants, who you now know is  
15 Andrew Owimrin, told her that she didn't have to. She says I  
16 was very clear I was not going to have to do anything, and  
17 Andrew Owimrin told her in response, don't worry about that,  
18 you won't have to do anything, you don't have to sell anything.  
19 There is nothing you have to do except keep up with the amount  
20 of money that is coming in so you can let our tax people that  
21 are working for you know how much you made.

22 Now, you heard during Ms. Thompson's testimony a bit  
23 about her notes, but you didn't see them. They're now in  
24 evidence at Government Exhibit 165 A. Her notes match her  
25 testimony. She writes in her notes the date and the time that



IB5JKET7

Summation - Ms. Fletcher

1 she spoke to a person, the person she spoke to, and what they  
2 talked about. On December 17th, she and Jonathan Stewart  
3 discussed the name of her company and where she should send the  
4 check for the \$18,997.00.

5 Once he sold her every biz-op product he could think  
6 of, he moved on to pitching her this merchant terminal  
7 business. She said he initially wanted her to buy three  
8 merchant terminals, but Emily Miller convinced her via text  
9 message she should start with one. Her notes confirm this.  
10 She spoke with Jonathan and Emily and decided to only start  
11 with one merchant account.

12 Her testimony about what she expected to get from  
13 those merchant accounts was unequivocal. She expected to make  
14 money back in 30 days. Jonathan Stewart told her she'd make  
15 money back in 30 days. You saw his text messages to her.  
16 Okay, great, Government Exhibit 172, I just got off the phone  
17 with Corporate credit coach, everything looking great for 30  
18 business days from today. She understood she would be getting  
19 Corporate credit within 30 days because Jonathan Stewart,  
20 Andrew Owimrin, told her that she would. Again look at her  
21 notes, dated when they spoke.

22 Ladies and gentlemen, you listened to two things in  
23 this case, Charlene Foster, the way that Andrew Owimrin speaks  
24 about Charlene Foster, and the second thing is what Jane  
25 Thompson writes in her notes.

IB5JKET7

Summation - Ms. Fletcher

1           Now, once there was nothing else to sell her and she  
2 still had a lot of money in reserve, Jane Thompson told you  
3 that Andrew Owimrin and Arash Ketabchi pitched her on a  
4 partnership with A1 Business Consultants, that if she gave them  
5 \$150,000, she would get a 20 percent stake in the business in  
6 return. She told you that she got a contract that initially  
7 laid out the amount of the sale, but omitted the ownership  
8 stake. Government Exhibit 165 A, these are her notes of the  
9 conversation about the 20 percent interest in the business.  
10 This is a conversation with Jonathan Stewart.

11           This is the first contract she got. This is her  
12 post-it. You can see what she wrote on here. Received these  
13 in May in 2-25-16. She got a second contract, April 4th, 2016,  
14 apologizing for the clerical error in the contract. These are  
15 her contemporaneous notes of the documents.

16           You know who prepared the contract by documents you  
17 saw Friday and today, Government Exhibit 515. The information  
18 from Ms. Thompson's contract is being sent from A1 Business  
19 Consultants to Shahram Ketabchi. He prepared these documents,  
20 the initial contract, all in Word on his computer. And then  
21 the response, apologizing for the clerical error of the  
22 ownership circulation. You saw the UPS label this morning. He  
23 may not have spoken to her, but he is the one who gave her  
24 this.

25           Andrew Owimrin is the one who got paid for it. The

IB5JKET7

Summation - Ms. Fletcher

1 \$150,000 investment in A1 Business Consultants was on February  
2 5th of 2016, and you can see on February 8th of 2016 Andrew  
3 Owimrin gets a \$9,500 check from A1 Business Consultants, and  
4 he also deposits \$3,000 in cash. That was his commission from  
5 the sale.

6 Now, Bill Sinclair told you that when Andrew Owimrin  
7 came back to work for him, he complained about his commission  
8 from the Jane Thompson sale. He thought he should have gotten  
9 a 50/50 split with Arash, and then just when you thought it  
10 couldn't get any worse, just when you thought they didn't have  
11 any more money to take from Jane Thompson, Mr. Owimrin pitched  
12 selling her debt consolidation services, another product to try  
13 to bleed more money out of her.

14 Andrew Owimrin told lie after lie to victim after  
15 victim. He knew that these victims didn't have real businesses  
16 and he didn't care. He was focused on lining his own pockets.  
17 So that is the first reason that you know that the defendants  
18 are guilty.

19 The second reason is the charge-backs. We talked a  
20 lot about charge-backs. You heard about how ordinarily  
21 businesses are able to open up a merchant account to accept  
22 credit card payments, and you know from your everyday lives  
23 that sometimes customers decide they want their money back  
24 after making purchase and they ask for a refund, but you heard  
25 about the charge-backs in this case, and your common sense

IB5JKET7

Summation - Ms. Fletcher

1 tells you that the charge-backs in this case were not the  
2 charge-backs initiated by run-of-the-mill customers who change  
3 their mind.

4 You heard about how at Olive Branch there were serious  
5 problems with charge-backs. Bill Sinclair told you about how  
6 he and Michael Finocchiaro both had their merchant accounts  
7 shut down because of too many charge-backs. Without the  
8 ability to process payments, the owners of the company had to  
9 lean on their salespeople and their other employees to open up  
10 merchant accounts for them.

11 You heard about how Andrew Owimrin couldn't get a  
12 merchant account on his own, so he was asked to co-sign on the  
13 Element Business Services business checking account. You saw  
14 the signature card. That is the last page of Government  
15 Exhibit 906 A. He co-signed on that checking account with  
16 Masoud Kouчек Manesh. The purpose of this account was to give  
17 Olive Branch Marketing access to the funds that would be  
18 flowing into the Element Business Services merchant account  
19 from victims.

20 Forensic account Jenna Casanova explained to you how  
21 this back account was essentially just a pass-through for the  
22 credit card processing payments to Olive Branch Marketing and  
23 later to A1. You can see some of those transactions on your  
24 screen at Government Exhibit 906, money comes in from A1  
25 Business Consultants to start the account, money comes in from

IB5JKET7

Summation - Ms. Fletcher

1 the credit card processor on July 23 of 2015, and then it is  
2 immediately funneled out to Olive Branch Marketing. By October  
3 of 2015, once Andrew Owimrin has left Olive Branch Marketing  
4 and is working for ash Ketabchi at A1, the money starts to get  
5 funneled out to A1 Business Consultants.

6 Now, these transactions, transactions through this  
7 account, these are -- bless you -- these are transactions in  
8 the proceeds of crime. These are the financial transactions in  
9 the victims' money. So every time these transactions take  
10 place, there is a money laundering crime.

11 Now, you heard about how at Olive Branch Marketing  
12 Michael Finocchiaro, who you heard from directly today, was  
13 responsible for charge-backs, charge-backs from clients who  
14 want to cancel. Think about this for a second. This is a  
15 co-owner of the company, and the only thing you heard about  
16 that he did was try to keep customers from getting their money  
17 back. That tells you a lot about how this business operated.

18 You heard how in 2015 the charge-backs were so bad  
19 that Olive Branch Marketing had to implement a retention plan.  
20 They started holding back a portion of each of the  
21 salespeople's pay to cover the average amount of anticipated  
22 charge-backs for that salesperson. You also heard that that  
23 didn't do enough to fix the problems caused by the excessive  
24 charge-backs, and so Olive Branch Marketing started holding  
25 back the entire amount of the charge-back if the salesperson

IB5JKET7

Summation - Ms. Fletcher

1 was responsible for the cancel.

2 Now, you saw what that did to Andrew Owimrin's bottom  
3 line. You see how much money he made from Olive Branch  
4 Marketing in July of 2015, more than \$8,000. In August and  
5 September and early October, less than \$2,500 total, and then  
6 he left. The charge-backs started to hit Andrew Owimrin's  
7 bottom line, and he left Olive Branch Marketing to go and work  
8 with Arash at A1, at A1, where there were no rules on earnings  
9 claims, no cap of \$10,000.00 per transaction, and he could just  
10 charge \$20,000 to Charlene Foster's credit card and nobody  
11 would care.

12 You saw some of those charge-backs and complaints  
13 yourselves. These were not just disappointed customers. These  
14 are people who could not possibly have run a business, who were  
15 promised they would make money from the business, and were  
16 conned into giving their money to Olive Branch and A1. Who was  
17 on the receiving end of these complaints? Shahram Ketabchi.

18 Joe Freeland submitted a detailed letter of exactly  
19 how he was defrauded. Shahram Ketabchi told you in his  
20 testimony he only glanced at this letter, but he looked at  
21 everything else very closely. You saw the documents that he  
22 collected and tracked and prepared for the purposes of  
23 disputing the charge-back. You saw his post-its tracking the  
24 status on his response and the credit card company's decision  
25 on the charge-back.

IB5JKET7

Summation - Ms. Fletcher

1 MR. SCHMIDT: Your Honor, I apologize. I have an  
2 objection to that exhibit, which was issued not for the truth,  
3 but for state of mind. Not this one.

4 THE COURT: Which one?

5 MS. FLETCHER: 206 B.

6 THE COURT: Put it up. (Pause).

7 THE COURT: All right. Take it down.

8 MS. FLETCHER: May I continue, your Honor?

9 THE COURT: I am looking for the records to 206 B.

10 Proceed.

11 MS. FLETCHER: Shahram Ketabchi told you he just  
12 glanced at Government Exhibit 206 B, but he read all of the  
13 other Joseph Freeland charge-back documents carefully. Read  
14 his post-its. You saw these this morning, and he knew when he  
15 won the charge-back, Government Exhibit 234 F, because the  
16 funds were credited back into the A1 business account.

17 He also saw other complaints, including an attorney  
18 general complaint from -- you saw this on Friday. She told  
19 Elizabeth Andiorio, the investigator from Passaic County, that  
20 the loss was a \$7,000 loss for a website for a person with no  
21 internet. Shahram Ketabchi, of course, denied seeing this one  
22 as well.

23 You also, not in here, but you also saw his response  
24 to this. You saw he actually submitted Ms. Zahn's contract to  
25 the investigator. That is Government Exhibit 517. In addition

IB5JKET7

Summation - Ms. Fletcher

1 to Ms. Zahn, you saw the complaint to regulators by Chris  
2 Klevjord, the handwritten her letter she wrote shutting down  
3 the account so he couldn't get access to them any more. Here  
4 is the complaint that was found in Shahram Ketabchi's  
5 apartment. When he got that complaint, he responded by  
6 emailing Ray Quiles, the fulfillment person, asking for proof  
7 of fulfillment for Chris Klevjord, 911, government Exhibit 450.

8 Even though Shahram Ketabchi saw these complaints, he  
9 saw victim after victim say that they were being defrauded, he  
10 continued to fight to get Al's charge-backs reversed. This is  
11 how he participated in the money laundering conspiracy. He  
12 told Arash that they had to fight the charge-backs and win.  
13 This is Government Exhibit 1011. We saw this this morning.

14 He fought to keep -- this is another example --  
15 Government Exhibit 1017, he fought to keep Rita Redding's money  
16 even though he saw this driver's license photo attached to her  
17 fulfillment documents. This is not the face of somebody with a  
18 successful online business.

19 He fought to get Jeanette Waldrup's money back after  
20 she explicitly set forth how he was promised earnings. He  
21 disputed those earnings claims in his response to the credit  
22 card company. He also fought to keep Patricia Cabral's money  
23 after her son, who you heard from in this trial, made it clear  
24 to Al Business Consultants that his mother had dementia and he  
25 wanted to cancel. This is an email dated December 4th of 2015.



IB5JKET7

Summation - Ms. Fletcher

1 It is an email to Shahram Ketabchi, Government Exhibit 512.

2 You heard from David Kandar how serious her condition  
3 was at the time. And notwithstanding that, six days later,  
4 Shahram Ketabchi continues to seek proof of fulfillment for  
5 Patricia Cabral so he and his brother Arash can keep Ms.  
6 Cabral's money.

7 Government Exhibit 441, five days later, he submits  
8 Patricia Cabral's charge-back, Government Exhibit 230. He  
9 disputed Diane Weissenberger's charge-back, and Charlene  
10 Foster's and Joe Freeland's, and he got paid for it. There are  
11 wires from A1 Business Consultants and cash deposits into his  
12 account by his brother at ATM locations in New Jersey and in  
13 New York.

14 Now, his notes on the charge-back documents and the  
15 fact that he is getting paid to do this work make clear to you  
16 that he understood exactly what he was doing. He understood  
17 this flow chart. He knew how the money flowed. He knew how  
18 once a sale was made, the merchant would deposit money into the  
19 sales account, the if a charge-back was initiated, the money  
20 would be pulled out, Government Exhibit 711, the flow chart  
21 that William Sinclair talked you through.

22 What he was trying to do once the charge-back pulled  
23 the money out of the sales account, get the charge-back  
24 reversed, get the bank to put the money back in the account.  
25 That is how he participated in the money laundering conspiracy.

IB5JKET7

Summation - Ms. Fletcher

1           Why did he need to fight these charge-backs and win?  
2           He wanted to keep the victims' money, obviously, but he also  
3           wanted to keep these merchant accounts open. Too many  
4           charge-backs meant the merchant accounts would get shut down,  
5           so once the charge-back, he got the money back into the  
6           account, there was less of a risk of the merchant shutting down  
7           the account.

8           What did that mean? The business could continue to  
9           operate, continue to accept victim payments for additional  
10          services for supposed online businesses. This is how his  
11          participation helped to promote the money laundering  
12          conspiracy -- excuse me -- promote the underlying telemarketing  
13          product. He relied on all of the tools that Bill Sinclair told  
14          you someone must rely on in order to fight the charge-backs.

15          He relied on contracts, Government Exhibit 120; and  
16          1103, the Diane Weissenberger contract; and 1104, contract with  
17          Charlene Foster; and 1137, the template contract that he  
18          maintained on his computer; 1140, the template cardholder  
19          continuation of services agreement. You heard from Bill  
20          Sinclair two weeks ago and from Michael Finocchiaro today this  
21          was a step in making a charge-back dispute successful from the  
22          perspective of the telemarketing company. If they could get  
23          the customer to sign this, they had a much higher likelihood of  
24          winning the charge-back. Diane's continuation of services  
25          agreement.

IB5JKET7

Summation - Ms. Fletcher

1           Now I want to stop for a moment and talk about  
2 Mr. William Sinclair. You heard him testify in early in this  
3 trial and you know he testified pursuant to a cooperation  
4 agreement with the government. As you're considering his  
5 testimony, I ask you to think about whether he had a reason to  
6 lie or a reason to tell the truth. He told you how his  
7 cooperation agreement worked, and his cooperation agreement is  
8 in evidence as Government Exhibit 817. You can look at it.

9           You'll see that the agreement sets forth what he told  
10 you over and over again on the stand. If he tells the truth,  
11 he has a chance at a reduced sentence. If he lies, his  
12 agreement will be ripped up and he will be stuck with his  
13 guilty plea and will face a potential 60 years in prison  
14 without the benefit of the letter from the government.

15           Now, you had the opportunity to compare his testimony  
16 with all of the evidence in this case, including with the  
17 testimony you heard today from Michael Finocchiaro. The  
18 question is not whether you like William Sinclair, it is not  
19 whether you think he is a good person. He is not. He  
20 defrauded countless victims over the course of several years.

21           The question is whether you think he is telling the  
22 truth, and the other evidence in this case tells you that he  
23 was. Now, you saw Jane Thompson's documents. You actually  
24 held them with your hands, the documents that she received when  
25 she was provided with a business plan and provided with a

IB5JKET7

Summation - Ms. Fletcher

1 Corporate Credit products that she purchased from Al. Now,  
2 what you didn't see, but what is in evidence and I point you to  
3 is that the documents that Shahram Ketabchi submitted were for  
4 all of the other victims who initiated charge-backs look  
5 exactly like the documents that Jane Thompson had.

6 So here is Charlene Foster's documents, Jane  
7 Thompson's, Rita Redding's documents, Cabral Enterprises,  
8 Patricia Cabral. These are cookie cutter business plans that  
9 these victims each paid thousands and thousands of dollars for.

10 This is the cooperation agreement I just mentioned,  
11 Government Exhibit 817. Now, the last way that you know that  
12 the defendants are guilty is the way that both of them sat up  
13 here and told you lie after lie and gave you excuse after  
14 excuse for their conduct. They told you implausible lies in  
15 hopes that you would be fooled just like their victims were.  
16 They're hoping to double-down on you.

17 Now, of course, as Judge Stein has told you, the  
18 defendant has no burden in this case. The government has the  
19 burden of proof. It is a burden that we embrace and it never  
20 shifts, but the defendants did testify in this case, and now  
21 that they've testified, you're entitled to evaluate their  
22 testimony, their truthfulness and their motivations just as you  
23 would evaluate the testimony of any other witness who is before  
24 you. When you evaluate the testimony of these two witnesses,  
25 you can see how it all fits together. Both of them have a

IB5JKET7

Summation - Ms. Fletcher

1 motive to lie, and both of them did.

2 Let's talk through some of the lies that they told you  
3 when they testified before you. Andrew Owimrin told you that  
4 it was all Brooke Marcus, Emily Miller and Arash Ketabchi.  
5 They took advantage of Ms. Thompson and he was just a hapless  
6 observer unaware of the lies that they were telling. The  
7 evidence and your common sense tells you that this makes no  
8 sense. Jane Thompson's testimony and her notes, which are now  
9 before you as Government Exhibit 165 A, are crystal clear. She  
10 says it was Jonathan Stewart who sold her the products. She  
11 said Jonathan Stewart tried to get her to purchase three  
12 merchant terminals, and Emily Miller told her no, no, just  
13 start with one.

14 If Brooke Marcus was going -- Brooke Marcus, known as  
15 Emily Miller -- was going to make these pitches to Jane  
16 Thompson, there was no reason for her to involve Jonathan  
17 Stewart, Andrew Owimrin. She could have done that herself, and  
18 there certainly would have been no reason for Jane Thompson to  
19 pay all of this money to Andrew Owimrin's company, A1 Business  
20 Consultants.

21 Andrew Owimrin also told you that he didn't know what  
22 the Element bank account was. Remember that you saw the  
23 Element Business Services checking account that he was on the  
24 signature card for that account, and he didn't know why it was  
25 created, but he knew exactly why, and so do you. Olive Branch

IB5JKET7

Summation - Ms. Fletcher

1 needed more merchant accounts because they needed to process  
2 more victim payments and they needed someone on the inside with  
3 access to those merchant accounts so that Olive Branch  
4 Marketing could get access to this money.

5 And they trusted Andrew Owimrin. He was a good  
6 salesman. They trusted him to join their scheme. They trusted  
7 him to handle their money. That is why he was the signer on  
8 the Element account and that is why when he left Olive Branch  
9 Marketing to work for Arash. He took the account with him. It  
10 was Arash who was continuing to use the Element Business  
11 Services account. Those are some of the lies Andrew Owimrin  
12 told you when he testified before you.

13 Shahram Ketabchi showed you, he showed you through his  
14 testimony that he will literally tell you any lie that he can  
15 think of in order to stay out of trouble and disclaim  
16 responsibility for what he did. He told you that the money  
17 from Arash was a gift or a loan or a payment for office work  
18 that he didn't think he had to pay taxes on, but he had no  
19 choice not to pay taxes anyway because he couldn't pay for it.

20 Excuse after excuse after excuse. He insisted over  
21 and over again he just did simple tasks for his brother and he  
22 handled charge-backs only on a limited occasion, but the  
23 evidence in this case shows you that he did much, much more.

24 He was his brother's man behind the scenes. He was  
25 his right-hand man. Look at his own words and email and text,

IB5JKET7

Summation - Ms. Fletcher

1 and when you do, you will see these are words not of an office  
2 filing cabinet who was doing simple tasks. They are the words  
3 of Arash Ketabchi's partner.

4 Now, you saw this email, Government Exhibit 423. He  
5 set up the company's forms for responding to charge-backs. He  
6 told you on the stand he didn't talk to salespeople, but  
7 Government Exhibit 1005 makes clear to you that he did. He is  
8 referring to a conversation he had with Andrew about Diane  
9 Weissenberger's sale in Government Exhibit 1005.

10 In Government Exhibit 1009, he is talking to his  
11 brother Arash about how Andrew is happy he made sales. Arash  
12 expresses concern about the merchant accounts holding the money  
13 and Shahram responds with emojis.

14 He told you when he testified before you that he  
15 didn't know his brother had used the phone name Zack Peterson  
16 until listening to the testimony in this trial, but you know  
17 from Government Exhibit 246 that it was Shahram Ketabchi who  
18 set up these emails including Arash's email Zack at A1 Business  
19 Consultants, along with the mails using the phone name names  
20 for Andrew and Reagan Owimrin.

21 He was involved in every aspect of Arash Ketabchi's  
22 business. He had copies of A1's bank records in his apartment,  
23 Government Exhibit 212 and 213. He counseled his brother on  
24 several different occasions in text messages, and you have  
25 these in evidence. This is Government Exhibit 1012. He

IB5JKET7

Summation - Ms. Fletcher

1 counseled his brother to be careful about linking bank accounts  
2 from separate entities because the banks would shut them down.  
3 Oh, this one, no, they will link and shut down.

4 Government Exhibit 1013, the same thing. Shahram  
5 tells his brother Arash groski, we need to have a million a  
6 month merchant credit lines. Once you add 10 sales better than  
7 Andrew and Reagan, boom. This is not a man doing simple tasks  
8 at the direction of his brother. His is his brother's partner.

9 Government Exhibit 1018, they talk about A1 Business  
10 Consultants being on the match list. Shahram suggested to his  
11 brother, Shahram suggested to his brother they should move  
12 their merchant accounts international. Government Exhibit  
13 1014, the same thing. He is asking for addresses not linked to  
14 A1 Business Consultants so that he can create alternate  
15 business names.

16 And he tells him that the reason you need alternate  
17 business names is for the web when they check us out. What he  
18 is referring to there is the merchants, when the merchants  
19 check out the businesses online, they need to show legitimacy.

20 He filled out all of these loan applications and  
21 merchant applications for his brother, Government Exhibits 222  
22 through 225, including some entities in Manhattan. He received  
23 numerous emails from the credit card processors, pointing out  
24 red flags related to the A1 business and Element merchant  
25 accounts, emails where the credit card processor talks about



IB5JKET7

Summation - Ms. Fletcher

1 throwing Element under the bus and lots of red flags going off  
2 with respect to the bank accounts.

3 More emails, 428. He helped his brother Arash figure  
4 out whether the salespeople were getting paid the right amount.  
5 He described it to you as just checking his brother's math, but  
6 in order for someone to check the math on Government Exhibit  
7 243, you have to understand what you're checking. He  
8 understood to reduce the sales amount by the merchant fees and  
9 the commissions of the salespeople. He denied knowing that  
10 Elevated Business was another name for Al Business Consultants,  
11 but Government Exhibit 218 was in his apartment.

12 He met with Arash's lead sources. You saw this  
13 photograph, Government Exhibit 714 is a photograph of Shahram  
14 Ketabchi sitting right next to Ryan Hult, who Bill Sinclair  
15 told you was the person who was responsible for giving Olive  
16 Branch nearly all of their leads during the 2014 through 2015  
17 time-frame, and you heard how Shahram Ketabchi tried to make  
18 excuses about this photo. He kept referring to Ryan Hult as  
19 his brother's acquaintance. They're sitting next to each other  
20 at brunch in Las Vegas.

21 Ryan Hult was in the the only lead source that Shahram  
22 Ketabchi had interactions with. He got leads from Emily, Emily  
23 Miller, that is Brooke Marcus. There is simply no reason for  
24 someone in Shahram Ketabchi's position to be interacting with  
25 lead sources if he is just a filing cabinet. Emily Miller

IB5JKET7

Summation - Ms. Fletcher

1 could have sent this lead list to Arash Ketabchi, but she  
2 didn't, she sent it to Shahram.

3 THE COURT: Sidebar, please.

4 (At sidebar)

5 THE COURT: Mr. Paul, your client is waving his head  
6 vigorously negatively. Undoubtedly, you didn't see it, but he  
7 is objecting quite demonstratively. Please speak to him.

8 MR. PAUL: I will.

9 (In open court)

10 THE COURT: Proceed.

11 MS. FLETCHER: Thank you. He, Shahram Ketabchi, had  
12 wire information for Carl Morris. Government Exhibit 463, this  
13 is the lead source based in Arizona who was responsible for  
14 creating the wrap program. Shahram Ketabchi is sending his  
15 brother information on how to pay Carl Morris.

16 And, finally, he helped Arash and his fiancée prepare  
17 fraudulent documentation to get a credit card for Daniel Quirk.  
18 He told you this morning he just transcribed what he told him,  
19 and she provided him with her tax returns but he didn't look at  
20 them. That is the most implausible thing you have heard  
21 throughout this entire trial.

22 He is the person nominated by his brother to do the  
23 dirty work, to send in the paperwork to get what they need, in  
24 this case, claiming Mr. Owimrin made \$280,000 a year so she  
25 could get a line of credit. You saw her tax returns,

IB5JKET7

Summation - Ms. Fletcher

1 Government Exhibit 215. All of these documents and more show  
2 you that Shahram Ketabchi was his brother's right-hand man.

3 His statements to you in this courtroom he was just a  
4 filing cabinet, those were lies, just like when he told the  
5 agents who searched his apartment he had nothing to do with his  
6 brother's business.

7 MR. PAUL: Objection. That is not the testimony.

8 THE COURT: I am sorry. Ladies and gentlemen, you  
9 decide what the testimony was. What these lawyers say the  
10 testimony is may or may not be true, but you decide.

11 Proceed.

12 MS. FLETCHER: These lies were designed to deflect  
13 responsibility away from him in just the same way that he did  
14 when he testified before you, lies designed to blame everything  
15 on Arash Ketabchi, the same type of lies that Andrew Owimrin  
16 told when he testified before you, that it wasn't him, that he  
17 didn't know, that it was all Arash Ketabchi.

18 But, ladies and gentlemen, the overwhelming evidence  
19 in this case shows you that the defendants knew exactly what  
20 they were doing when they operated this telemarketing, they  
21 knew they were using telemarketing to steal money from victims  
22 and they were committing money laundering by moving those  
23 victims' through their merchant accounts.

24 Andrew Owimrin was the frontman. He was the gifted  
25 salesman who sold his customers lie after lie. Shahram

IB5JKET7

Summation - Ms. Fletcher

1 Ketabchi was his brother's right-hand man and behind the  
2 scenes. He worked hard to keep the money that Andrew Owimrin  
3 and the other salesmen stole. Both defendants are guilty as  
4 charged. Thank you.

5 THE COURT: Thank you, Ms. Fletcher. Ladies and  
6 gentlemen, it is 10 to 5:00. I don't think it makes sense to  
7 start the summation, the next summation. I will let you go for  
8 the evening.

9 I do want everybody to be able to vote if they so  
10 choose tomorrow. You have the opportunity in these two weeks  
11 to participate in two of the wonderful aspects of the American  
12 experience. I mean that seriously. I mean that very  
13 seriously. The right to sit on a jury, the obligation to sit  
14 on a jury and the right, and from my standpoint, the obligation  
15 to vote for the candidates that you think should represent us.

16 By the same token, all of the legal wrangling is over.  
17 There aren't going to be any more delays because the legal  
18 issues are resolved. We are going to have the two defense  
19 summations and then we are going to have the government  
20 rebuttal summation and then my charge, and you should get this  
21 case tomorrow for your deliberation.

22 With that in mind, I'd like to start at the same time  
23 as we have been doing, 9:15. If anybody feels they won't be  
24 able to vote with that time schedule, I'll change it. If you  
25 all feel you can vote, again if you decide to, let's start

IB5JKET7

Summation - Ms. Fletcher

1 tomorrow at 9:15. It doesn't look like anyone is objecting.  
2 You have been very timely. See you tomorrow at 9:15. Keep an  
3 open mind.

4 (Jury excused)

5 THE COURT: All right. 9:15 tomorrow. We should be  
6 able to start my charge either late morning or early afternoon.

7 Ms. Fletcher, my personal recollection that doesn't  
8 matter, and I think what I told the jury is correct, it is  
9 their recollection is what matters, indeed, Mr. Ketabchi denied  
10 saying that he had nothing to do with his brother's business.  
11 I think you asked him if he had said that, and I think he said  
12 no.

13 MS. FLETCHER: That's right, your Honor. The argument  
14 was based on Special Agent Giattino's testimony that Shahram  
15 Ketabchi denied it.

16 THE COURT: It is in the record. In any event,  
17 they'll make the determination.

18 MR. SCHMIDT: Are we going to get a clean copy of this  
19 tomorrow or should I leave them here?

20 THE COURT: You're holding up the charge?

21 MR. SCHMIDT: Yes.

22 THE COURT: We can get it to you now. Let's see.

23 (Off-the-record discussion)

24 THE COURT: If you want, we can print it and you can  
25 take it.

IB5JKET7

Summation - Ms. Fletcher

1 MR. SCHMIDT: That is okay. I am fine with this to  
2 take with me and that tomorrow.

3 THE COURT: When you come in, you'll have clean  
4 copies.

5 (Court adjourned until Tuesday, November 6, 2018, at  
6 9:15 o'clock am)

## INDEX OF EXAMINATION

Examination of:	Page
-----------------	------

SHAHRAM KETABCHI

Cross By Ms. Fletcher . . . . .	.1722
---------------------------------	-------

Redirect By Mr. Paul . . . . .	.1756
--------------------------------	-------

Recross By Ms. Fletcher . . . . .	.1760
-----------------------------------	-------

Redirect By Mr. Paul . . . . .	.1763
--------------------------------	-------

MICHAEL FINOCCHIARO

Direct Q. . . . .	.1765
-------------------	-------

Cross By Ms. Fletcher . . . . .	.1813
---------------------------------	-------

Cross By Mr. Schmidt . . . . .	.1823
--------------------------------	-------

Redirect By Mr. Paul . . . . .	.1859
--------------------------------	-------

## GOVERNMENT EXHIBITS

Exhibit No.	Received
-------------	----------

431 . . . . .	.1723
---------------	-------

433 . . . . .	.1725
---------------	-------

438 . . . . .	.1727
---------------	-------

519 . . . . .	.1737
---------------	-------

520 . . . . .	.1739
---------------	-------

533 . . . . .	.1741
---------------	-------

818 . . . . .	.1860
---------------	-------